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10 **UNITED STATES DISTRICT COURT**  
11 **CENTRAL DISTRICT OF CALIFORNIA**

12 Wimo Labs, LLC

13 Plaintiff,

14 v.

15  
16 eBay, Inc., a Delaware Corporation;  
17 PayPal Holdings, Inc., a Delaware  
Corporation, Hoonie S. Kang, an  
18 individual; D.I.R. Enterprises, Inc., a  
California Corporation; Simon Chen, an  
19 individual; cyber-innovation, an entity  
of unknown origin; ledno3, an  
20 individual or entity of unknown origin;  
usa-cyberlink, an individual or entity of  
21 unknown origin; usacyber, an individual  
or entity of unknown origin; usgadget-  
22 tech, an individual or entity of unknown  
origin; here-buy, an individual or entity  
23 of unknown origin; laptop-cyber, an  
individual or entity of unknown origin;  
24 and bearbear-2010, an individual or  
entity of unknown origin,

25 Defendants.

CASE NO.:

COMPLAINT

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1 Plaintiff Wimo Labs, LLC, by their attorneys, the R. Rex Parris Law Firm and  
2 Deborah A. Klar, for their complaint against Defendant eBay, Inc., alleges as follows:

3 **NATURE OF THE ACTION**

4 1. The Internet has opened the door for unauthorized merchants to reach a  
5 wide range of consumers in their efforts to sell obvious counterfeit versions of  
6 products that are not manufactured, licensed, or approved by the duly registered  
7 owner(s) of the product's trademark(s) ("Fake Products"). "Counterfeiting is a \$1  
8 trillion global criminal enterprise, and e-commerce websites, including eBay, are an  
9 ideal platform to distribute counterfeits directly to the consumer. e-Commerce  
10 websites reap billions in revenue, and profit from transaction fees for the counterfeit  
11 product web sales."<sup>i</sup> The sale of products that infringe on U.S. trademarks threaten  
12 the health and safety of American consumers and the U.S. economy. In 2013, the  
13 total value of customs-related Seizures (MSRP) in the United States was \$1.74  
14 Billion,<sup>ii</sup> which Plaintiff is informed and believes represents only a small fraction of  
15 the counterfeit products shipped into the United States.

16 2. This is an action against eBay, Inc. ("eBay"), its wholly-owned  
17 subsidiary PayPal, Inc. ("PayPal") (now publicly-traded PayPal Holdings, Inc.), and  
18 various unauthorized sellers registered on www.ebay.com ("Seller Defendants"). The  
19 action arises in connection with eBay's direct and contributory infringement on  
20 Plaintiff's Marks notwithstanding reports by Plaintiff and others to eBay that there  
21 have been more than *five thousand intentional unlawful listings on ebay.com* by  
22 more *than two thousand ebay.com registered sellers* ("Unauthorized Sellers")<sup>iii</sup> of  
23 obvious counterfeit Lunatik products (sometimes referred to herein as "Fake Lunatik  
24 Products") that display Plaintiff's trademarks, in violation of the Trademark Act of  
25 1946, 15 U.S.C. § 1051, et seq. (the "Lanham Act"), the Racketeer Influenced and  
26 Corrupt Organizations Act, 18 U.S.C. § 1962(c), et seq. ("RICO").

1           3.       Since February 2013, Plaintiff has sent eBay more than 5,557 Notices of  
2 Claimed Infringement (“NOCI”) by at least 2,200 individual ebay.com registered  
3 sellers. The NOCI are broken down by product and location of product. At all  
4 relevant times, eBay had direct control and the ability to monitor ebay.com, the  
5 instrumentality used by ebay.com registered sellers to infringe on Plaintiff’s Marks,  
6 and has had reasonable means available to withdraw its services so that ebay.com  
7 could not be used by Unauthorized Sellers to directly infringe on Plaintiff’s  
8 trademarks. For example, it is reported that the most successful avenue for shutting  
9 down a counterfeiter is to cut off its flow of funding from credit card companies and  
10 banks, such as the flow of funding facilitated by eBay and PayPal.

11           4.       Recognizing eBay’s role and expecting, among other things, that eBay  
12 would use the reasonable means it has available to take prophylactic and other action  
13 against Unauthorized Sellers’ continuing trademark infringement, the Plaintiff’s  
14 NOCIs request eBay’s “cooperation in identifying to [Plaintiff] [eBay’s] source for  
15 the infringing products.”

16           5.       Instead of cooperating or taking effective remedial action against  
17 recidivist counterfeiters, (i) eBay protects and conceals the identity of its  
18 Unauthorized Sellers; (ii) eBay does not take the reasonable means it has available to  
19 withdraw its services to Unauthorized Sellers; and (iii) eBay continues to allow  
20 ebay.com and PayPal to be used by thousands of Unauthorized Sellers to advertise  
21 Fake Products that display counterfeit Lunatik trademarks that infringe on Plaintiff’s  
22 trademarks.

23           6.       Because eBay and PayPal cannot continue to enjoy the enormous profits  
24 derived from the proliferation of Fake Products sold on the eBay website if the  
25 intentional infringing unauthorized sellers are excluded, eBay’s policies and practices  
26 are designed to, among other things, (i) promote the unlawful activities of its  
27 unauthorized sellers by soliciting eBay buyers to purchase Fake Lunatik Products

1 knowingly using listings that infringe on Plaintiff's Marks, (ii) conceal and protect the  
2 identity of the sellers who are responsible for intentional trademark infringement on  
3 the eBay website, and (iii) ignore evidence of the unlawful activities by its  
4 unauthorized sellers. On account of eBay's policies and practices, it has reason to  
5 know and suspect that users of ebay.com are infringing on legitimate rights of  
6 trademark holders, such as Plaintiff.

### 7 **THE PARTIES**

8 7. Plaintiff Wimo Labs, LLC, doing business as Lunatik ("Lunatik" or  
9 "Plaintiff") is a Delaware limited liability company registered to do business in  
10 California with its principal place of business in Irvine, California. Plaintiff holds  
11 multiple federal registrations in its LUNATIK® mark.

#### 12 **A. eBay Defendants**

13 8. Defendant eBay Inc. ("the Company" or "eBay") is a Delaware  
14 corporation with its principal place of business located in San Jose, California. eBay  
15 is an American multinational corporation and e-commerce company, providing  
16 consumer to consumer & business to consumer sales services via the Internet.

17 9. PayPal Holdings, Inc. ("PayPal") was incorporated in Delaware in  
18 January 2015 for the purpose of owning and operating eBay's Payments business in  
19 connection with the separation and distribution described in the S-1 Registration  
20 Statement recently filed by eBay with the Securities & Exchange Commission. The  
21 address of PayPal's principal executive offices is PayPal Holdings, Inc., 2211 North  
22 First Street, San Jose, California 95131. Before it's recent spin-off, PayPal was a  
23 wholly-owned subsidiary of eBay. Established in 1998, PayPal had its IPO in 2002,  
24 and became a wholly owned subsidiary of eBay later that year. In 2014, PayPal  
25 moved \$228 billion in 26 currencies across more than 190 nations, generating total  
26 revenue of \$7.9 billion (44% of eBay's total reported profits). It was announced on  
27 September 30, 2014, that eBay would spin off PayPal into a separate publicly traded  
28

1 company. PayPal started trading on NASDAQ on or about July 20, 2015. PayPal  
2 reports that after the spin-off, “[it] will derive a significant amount of revenues from  
3 eBay.” Plaintiff is informed and believes that based on agreements between PayPal  
4 and eBay, post spin-off, there will be no material change in the nature and scope of  
5 the services that PayPal provides to buyers and sellers who process transactions on  
6 ebay.com.

7 **B. Seller Defendants**

8 10. Defendant Hoonie S. Kang (“Kang” or “Seller 1”), identified as eBay  
9 Seller 18074, is located in Stevenson Ranch, California according to eBay registered  
10 user information. Kang’s eBay user I.D. is “scvhills.” According to ebay.com,  
11 “[b]ased in United States, [Seller 1] has been an eBay member since March 22,  
12 2000.” The return address Seller 1 has used on products that infringe on the Lunatik  
13 trademarks is 25876 The Old Road #46, Stevenson Ranch, California 91381. Since  
14 November 2014, eBay reports that Seller 1 has sold at least 28,000 Fake Lunatik  
15 iPhone cases through ebay.com through one or more listings that use one or more  
16 Lunatik trademarks.

17 11. Defendant D.I.R. Enterprises, Inc. (“DIR” or “Seller 2”), identified as  
18 eBay Seller 40101, is a California corporation, entity number C3440931, that lists its  
19 eBay user I.D. as “accessory-innovation.” According to ebay.com, “[b]ased in United  
20 States, [Seller 2] has been an eBay member since Nov 17, 2010.” Seller 2 is located  
21 in El Monte, California. Since at least November 2014, eBay reports that Seller 2 has  
22 sold at least 2,700 Fake Lunatik iPhone cases through ebay.com through one or more  
23 listings that use one or more Lunatik trademarks.

24 12. Defendant Simon Chen (“Chen” or “Seller 3”), identified as eBay Seller  
25 32903, is located in Shanghai. Chen lists his eBay user I.D. as “netled.” According  
26 to ebay.com, “[Seller 3 is] based in China and has been an eBay member since Jun 12,  
27 2008.” Plaintiff is informed and believes that Seller 3 stores Fake Lunatik Products in  
28



1 Rowland Heights, California. Plaintiff is informed and believes that Seller 3 also  
2 does business in the United States in Austin, Texas. Since at least November 2014,  
3 eBay reports that Seller 3 has sold Fake Lunatik iPhone cases through ebay.com  
4 through one or more listings that use one or more Lunatik trademarks.

5 13. Defendant cyber-innovation (“Cyber-Innovation” or “Seller 4”),  
6 identified as eBay Seller 37283, is also identified as a “Top Rated Plus” Seller” on  
7 ebay.com. Seller 4 lists its ebay.com User I.D. as “cyber-innovation.” According to  
8 ebay.com, “[b]ased in China, cyber-innovation has been an eBay member since  
9 January 8, 2008.” Plaintiff is informed and believes that in the United States, Seller 4  
10 does business through Si Zheng Shipping Department, 3612 Arden Drive Suite D1, El  
11 Monte, California. Since at least November 2014, eBay reports that Seller 4 has sold  
12 Fake Lunatik iPhone cases through ebay.com through one or more listings that use  
13 one or more Lunatik trademarks.

14 14. Defendant ledno3 (“Ledno3” or “Seller 5”), identified as eBay Seller  
15 14394, lists its ebay.com User I.D. as “ledno3. According to ebay.com, “[b]ased in  
16 China, ledno3 has been an eBay member since Feb 19, 2014.” Plaintiff is informed  
17 and believes that Seller 5 stores Fake Lunatik Products in Rowland Heights,  
18 California. Since at least November 2014, eBay reports that Seller 5 has sold Fake  
19 Lunatik iPhone cases through ebay.com through one or more listings that use one or  
20 more Lunatik trademarks.

21 15. Defendant usa-cyberlink (“USA-Cyberlink” or “Seller 6”), identified as  
22 eBay Seller 41423, is also identified as a “Top Rated Plus” seller on ebay.com. Seller  
23 6 lists its ebay.com User I.D. as “usa-cyberlink.” According to ebay.com, “[b]ased in  
24 China, usa-cyberlink has been an eBay member since Feb 25, 2008.” Plaintiff is  
25 informed and believes that Seller 6 stores Fake Lunatik Products in El Monte,  
26 California. Since at least July 2014, eBay reports that Seller 6 has sold Fake Lunatik  
27  
28



1 iPhone cases through ebay.com through one or more listings that use one or more  
2 Lunatik trademarks.

3 16. Defendant usacyber (“USACyber” or “Seller 7”), identified as eBay  
4 Seller 32166, lists its ebay.com User I.D. as “usacyber.” According to ebay.com,  
5 Seller 7 is based in China and has been a member of ebay.com since March 5, 2010.  
6 Plaintiff is informed and believes that Seller 7 stores Fake Lunatik Products in El  
7 Monte, California. Since at least July 2014, eBay reports that Seller 7 has sold Fake  
8 Lunatik iPhone cases through ebay.com through one or more listings that use one or  
9 more Lunatik trademarks.

10 17. Defendant usgadget-tech (“USGadget-Tech” or “Seller 8”), identified as  
11 eBay Seller 22596, is also identified as a “Top Rated Plus” seller on ebay.com. Seller  
12 8 lists its ebay.com User I.D. as “usgadget-tech.” According to ebay.com, “[b]ased in  
13 China, usgadget-tech has been an eBay member since Nov 30, 2012.” Plaintiff is  
14 informed and believes that Seller 8 stores Fake Lunkatik Products in El Monte,  
15 California. Since at least July 2014, eBay reports that Seller 8 has sold Fake Lunatik  
16 iPhone cases through ebay.com through one or more listings that use one or more  
17 Lunatik trademarks.

18 18. Defendant here-buy, (“Here-Buy” or “Seller 9”), identified as eBay  
19 Seller 14031, is also identified as a “Top Rated Plus” seller on ebay.com. Seller 9  
20 lists its ebay.com User I.D. as “here-buy.” According to ebay.com, “[b]ased in China,  
21 here-buy has been an eBay member since Apr 25, 2013.” Plaintiff is informed and  
22 believes that Seller 9 stores Fake Lunatik Products in El Monte, California. Since at  
23 least November 2014, eBay reports that Seller 9 has sold Fake Lunatik iPhone cases  
24 through ebay.com through one or more listings that use one or more Lunatik  
25 trademarks.

26 19. Defendant laptop-cyber (“Laptop-Cyber” or “Seller 10”), identified as  
27 eBay Seller 24768, is also identified as a “Top Rated Plus” seller on ebay.com.  
28

1 Seller 10 lists its ebay.com User I.D. as “laptop-cyber.” According to ebay.com,  
2 “[b]ased in China, laptop-cyber has been an eBay member since May 18, 2010.”  
3 Plaintiff is informed and believes that Seller 10 stores Fake Lunatik Products in El  
4 Monte, California. Since at least July 2014, eBay reports that Seller 10 has sold Fake  
5 Lunatik iPhone cases through ebay.com through one or more listings that use one or  
6 more Lunatik trademarks.

7 20. Defendant bearbear-2010 (“BearBear” or “Seller 11”) is identified as a  
8 “Top Rated Plus” seller on ebay.com. Seller 11 lists its ebay.com User I.D. as  
9 “bearbear-2010.” According to ebay.com, “[b]ased in China, bearbear-2010 has been  
10 an eBay member since Sep 27, 2010.” Plaintiff is informed and believes that Seller  
11 11 stores Fake Lunatik Products in El Monte, California. Since at least November  
12 2014, eBay reports that Seller 11 has sold Fake Lunatik iPhone cases through  
13 ebay.com through one or more listings that use one or more Lunatik trademarks.

#### 14 **JURISDICTION**

15 21. This is an action arising under the Trademark Act of 1946, 15 U.S.C. §  
16 1051, *et seq.* (the “Lanham Act”), the Racketeer Influenced and Corrupt  
17 Organizations Act, 18 U.S.C. §1962(c), *et seq.* (“RICO”).

18 22. This Court has federal question jurisdiction over this action under 15  
19 U.S.C. § 1121(a) (action arising under the Lanham Act), 28 U.S.C. §§ 1331 (federal  
20 question), 1338(a) (any Act of Congress relating to patents or trademarks), and  
21 1338(b) (action asserting claim of unfair competition joined with a substantial and  
22 related claim under the trademark law).


#### 23 **VENUE**

24 23. Venue is proper in this District under 28 U.S.C. §§ 1391(b), (c) and (d)  
25 as Defendants transact business in Los Angeles County, California, a substantial part  
26 of the events or omissions giving rise to the claim occurred within this District, and  
27 one or more of the Seller Defendants has its principal place of business in this district.

**FACTUAL ALLEGATIONS**

**C. Plaintiff's Business and Marks**

24. Plaintiff is the owner of all right, title and interest in and to, *inter alia*, the following federally registered trademarks and/or service marks:

<b>U.S. Registration No.</b>	<b>Mark</b>	<b>Reg. Date</b>	<b>Goods Covered (summarized)</b>
4,075,222	LUNATIK	Dec. 20, 2011	Watch bands for holding PDAs
4,296,576	LUNATIK	Feb. 26, 2013	Cases for electronic devices (and much more)
4,262,488	TAKTIK	Dec. 18, 2012	Mobile phone cases
4,542,506	 ("Lunatik Logo Mark")	June 3, 2014	Cases for electronic devices (cell phones, PDAs (e.g., smart watches), and much more

25. Annexed hereto as Exhibit 1 are true and correct copies of the United States Patent and Trademark Office ("PTO") registration certificates evidencing Plaintiff's ownership of these trademarks. Plaintiff used each mark in commerce on or before the first date of use set forth in Exhibit 1. All of the registrations set forth in Exhibit 1 are valid and subsisting, and Lunatik also owns common law rights in the above and other marks for use in connection with Lunatik Products. These registered and common law trademarks are collectively referred to as the "Lunatik Marks" or "Plaintiff's Marks."

26. The Lunatik Marks are in full force and effect. Lunatik has never abandoned the Lunatik Marks nor has Lunatik ever abandoned the goodwill of its businesses in connection thereto. Lunatik intends to continue to preserve and maintain its rights with respect to the Lunatik Marks.

27. Lunatik does not sell on ebay.com, and does not authorize any of its licensed distributors to sell on ebay.com.

28. Lunatik's website offers various types of products for sale to Internet users. Lunatik designs premium products that transform and enhance the user's mobile, digital life. As to its iPhone cases, Lunatik categorizes its iPhone cases into different types for iPhone 4s, iPhone 5/5s, iPhone 5c, iPhone 6, and iPhone 6 Plus. Lunatik also sells two rugged protection systems for Apple



watches, EPIK and EPIK Aluminum. Each product has a different appearance, function, and purpose. Shown below is a true and accurate screenshot of Lunatik's website at [www.lunatik.com](http://www.lunatik.com) on which its iPhone cases and EPIK products are sold, as well as various other consumer products.

29. The authentic TAKTIK® Extreme for iPhone 4 ("TAKTIK® Extreme for iPhone 4s"), manufactured by Plaintiff, is Lunatik's Premium Protection System for the iPhone 4s. The MSRP for TAKTIK® Extreme for iPhone 4s is \$99.95.



30. Shown to the left is an image of an authentic TAKTIK® Extreme for iPhone 4 with the Corning® Gorilla® Glass Impact Lens For Screen Protection which bears Lunatik's federally registered trademark names and logo mark. *See* Ex. 1 (Lunatik U.S. Reg.

Nos. 4,296,576, 4,262,488 and 4,542,506). Lunatik makes the TAKTIK® Extreme for iPhone 4s with a ballistic-grade polymer (plastic) and only sells it in white and black. TAKTIK® Extreme for iPhone 4s is designed to exceed user expectations in the rugged case market. TAKTIK® Extreme for iPhone 4s balances strong iconic

1 aesthetics with innovative performance features to transform the iPhone 4s through  
2 bold design, precision engineering and the best performance materials available.

3 31. The authentic LUNATIK® TAKTIK® Extreme cell phone case for  
4 iPhone 5s (“TAKTIK® Extreme for iPhone 5s”) is manufactured and distributed by  
5 Plaintiff. Originally the MSRP was \$129.95. In July, 2015, the MSRP was lowered  
6 to \$89.95.

7 32. Shown to the right is an  
8 image of an authentic TAKTIK®  
9 Extreme for iPhone 5s with the  
10 Corning® Gorilla® Glass Impact Lens  
11 For Screen Protection which bears  
12 Lunatik’s federally registered trademark  
13 names and logo mark. *See* Ex. 1



14 (Lunatik U.S. Reg. Nos. 4,296,576, 4,262,488 and 4,542,506). Lunatik makes the  
15 TAKTIK® Extreme for iPhone 5s with a ballistic-grade polymer (plastic) and only  
16 sells it in white with a gold port cover, and black with a red port cover. TAKTIK®  
17 Extreme for iPhone 5s has an upgraded rear bezel to be fully compatible with the new  
18 5s iSight camera and flash. TAKTIK® Extreme for iPhone 5s delivers refined and  
19 ultra-rugged protection from impact, drops and screen damage as well as water and  
20 dust ingress. Featuring an industry-first Corning® Gorilla® Glass lens,  
21 TAKTIK® Extreme for iPhone 5s provides screen protection that does not  
22 compromise on touch screen responsiveness.

23 33. TAKTIK® 360 for iPhone 6, manufactured by Plaintiff, is the evolution  
24 of Lunatik’s most protective case, TAKTIK® Extreme (“TAKTIK® 360”). The  
25 MSRP for TAKTIK® 360 for iPhone 6 is \$124.95.

26 34. Shown to the left is an image of an authentic TAKTIK® 360 for  
27 iPhone 6 with the Corning® Gorilla® Glass Impact Lens For Screen Protection which  
28



bears Lunatik's federally registered trademark names and logo mark. *See* Ex. 1 (Lunatik U.S. Reg. Nos. 4,296,576, 4,262,488 and 4,542,506). The TAKTIK® 360 is made with a ballistic-grade polymer (plastic) and is only available in black.

While maintaining Lunatik's tough standards for impact and drop protection, TAKTIK® 360 provides enhanced protection from water and dust. Installation is made easier with Lunatik's patent pending compression closure system and single latch closure. The Corning® Gorilla® Glass lens adds an extra layer of screen protection without compromising a fluid touchscreen experience. TAKTIK® 360 is the ultimate in rugged protection.

35. The EPIK Aluminum for Apple Watch ("LUNATIK® EPIK") is manufactured by Plaintiff. The MSRP for the LUNATIK® EPIK is \$139.95.

36. Shown to the right is an image of an authentic LUNATIK® EPIK Apple Watch Kit (only available for sale on a pre-order basis on Plaintiff's website), which bears Lunatik's federally registered logo mark. *See* Ex. 1 (Lunatik U.S. Reg. No. 4,542,506). The packaging for the product bears Lunatik's federally registered trademark name. *See* Ex. 1 (Lunatik U.S.



Reg. No. 4,296,576). The LUNATIK® EPIK transforms the Apple Watch into a ruggedly refined companion more suited for the abuse an everyday active lifestyle "dishes out." It is designed to protect the Apple Watch and provides enhanced tactile control and unobstructed access to the watch's sensor and features.

37. Plaintiff maintains strict quality control standards for its products.



Customers, potential customers, and other members of the public and industry associate Plaintiff's products with high quality materials, style, and functionality. Plaintiff's products are among the most sought after iPhone cases offered for sale in the United States. On information and belief, many consumers purchase Plaintiff's products because of Plaintiff's reputation for durable, long-lasting products – characteristics that result from Plaintiff's strict material and manufacturing standards.

38. Shown below is an image of the packaging for TAKTIK® Extreme iPhone cases, which bears Lunatik's federally registered trademark name and logo mark. See Ex. 1 (Lunatik U.S. Reg. Nos. 4,227,706 and 4,542,506). Plaintiff's products are displayed in their respective advertising and promotional materials. To date, Plaintiff has spent hundreds of thousands of dollars on advertising and promoting its respective marks and products, and Plaintiff has enjoyed millions of dollars in sales.





1        39. Plaintiff's continuous and broad use of its respective marks on its  
2 products and packaging for the products has expanded their renown and enabled  
3 Plaintiff's Lunatik Marks and brand to be one of the best known in the industry –  
4 particularly with respect to high-end, ultra-protective phone cases. Even eBay itself  
5 admits and advertises Lunatik's phone cases as being among the most durable  
6 smartphone cases on the market.<sup>iv</sup>

7        40. Plaintiff's reputation is a direct result of its extensive advertising and  
8 promotion, concomitant widespread sales, the care and skill utilized in the  
9 manufacturing of its products, the uniform high quality of such products sold under or  
10 in connection with Plaintiff's Marks, and the public acceptance thereof. Plaintiff has  
11 created invaluable goodwill throughout the United States and elsewhere by selling  
12 products of consistent dependable quality. Based on the extensive sales of the  
13 Plaintiff's Products and the wide popularity of the Lunatik brand, Plaintiff's Marks  
14 have developed a secondary meaning and significance in the minds of the purchasing  
15 public, and the services and products utilizing and/or bearing such marks and names  
16 are immediately identified with Plaintiff by the purchasing public. Plaintiff's  
17 valuable goodwill and brand value is being blurred and has been tarnished by the  
18 rampant infringement alleged herein.

19        **D. Counterfeiting and the Internet**

20        41. Perhaps the single greatest threat to brand owners such as Plaintiff is the  
21 global sale of counterfeit products, including products with counterfeit marks that  
22 intentionally infringe on the legitimate owners' trademarks.

23        42. Reports introduced into the Congressional Record indicate that  
24 counterfeiting costs U.S. businesses between \$200 and \$250 billion every year and  
25 results in 750,000 lost jobs. Congress has recognized that counterfeits not only  
26 present “ ‘grave risks to the health and safety of consumers of these articles,’ but have  
27 a “ ‘dire effect on the economy’ ” as well.<sup>v</sup>

1        43. The Internet has become an increasingly popular way to market products  
2 with counterfeit marks to consumers globally and in the United States by providing  
3 increased access to customers and allowing the infringing goods to be shipped in  
4 small quantities to better evade detection by customs and other law enforcement  
5 agencies. The lure of the Internet is easy to understand from the perspective of the  
6 sellers of counterfeit and fake products: there is a minimal cost for operating a  
7 website, a decreased risk of prosecution and, if the counterfeiters are forced to shut  
8 down one online store, they can simply open another.

9        **E. eBay's Business**

10        44. Defendant eBay, Inc. is the proprietor of [www.ebay.com](http://www.ebay.com) ("ebay.com"),  
11 an Internet-based marketplace that allows those who register with it to purchase goods  
12 from and sell goods to one another. It connects buyers and sellers and enables  
13 transactions, which are carried out directly between eBay members.<sup>vi</sup> In its auction  
14 and listing services, it provides the venue for the sale of goods and support for the  
15 transactions.<sup>vii</sup> "Founded in 1995, eBay connects a diverse and passionate community  
16 of individual buyers and sellers, as well as small businesses. eBay is the world's  
17 largest online marketplace with over 120 million active users worldwide. Their  
18 collective impact on e-commerce is staggering. In 2012, individual buyers & sellers  
19 and businesses sold over \$75 billion worth of goods on eBay."<sup>viii</sup> In 2014, eBay's  
20 operating profit margin was 19.63%.<sup>ix</sup>

21        45. The business of eBay is to "enable global commerce and payments on  
22 behalf of users, merchants, retailers and brands of all sizes."<sup>x</sup> As reported in the eBay  
23 Form 10-K for the period ending December 31, 2014 ("eBay Annual Report"), the  
24 technologies and services eBay provides through its website, ebay.com, are designed  
25 to enable users and merchants worldwide to organize and offer their inventory for sale  
26 and buyers to find, buy and pay for it virtually anytime and anywhere. eBay enables  
27 commerce through three reportable segments: Marketplaces, Payments and  
28

1 Enterprise. According to eBay, the company “is only successful when the users and  
2 merchants we enable are successful.”<sup>xi</sup> eBay reports that it is “primarily a transaction-  
3 based business that generates revenue from the transactions and payments that it  
4 successfully enables.”<sup>xii</sup>

5 46. eBay’s Marketplaces segment includes its core global ecommerce  
6 platform, ebay.com and other localized sites around the world.<sup>xiii</sup> eBay’s  
7 Marketplaces offer the following features: (i) ebay.com is a leading commerce  
8 platform for users and merchants; (ii) ebay.com provides a variety of access points for  
9 consumers to shop virtually anytime, anywhere; and (iii) ebay.com provides a large  
10 selection of inventory globally.<sup>xiv</sup>

11 47. eBay’s Payments segment includes its core payments brand PayPal,  
12 which enables individuals and businesses to securely, easily and quickly send and  
13 receive payments online and through a broad range of mobile devices in  
14 approximately 203 markets worldwide and in 26 currencies as of December 31, 2014.  
15 eBay’s Payments platforms offer the following features: (i) eBay enables payment in  
16 the online and physical worlds; (ii) eBay’s global reach and scale provides value for  
17 consumers and merchants; and (iii) eBay’s payments solutions offer leading fraud  
18 prevention and protection.<sup>xv</sup>

19 48. eBay measures its footprint in its “addressable market” using a metric that  
20 it calls “Enabled Commerce Volume” (“ECV”). ECV consists of the total commerce  
21 and payment volume that runs through eBay platforms which eBay enables on behalf  
22 of its merchants and retailers.<sup>xvi</sup> As of December 31, 2014, eBay’s Marketplaces  
23 segment had more than 155 million active buyers and more than 800 million listings  
24 globally, while its Payments segment had 162 million active registered accounts.<sup>xvii</sup>  
25 eBay generates revenue by charging sellers to use its listing services. For any listing,  
26 it charges an “insertion fee.” Fee amounts are based on the terms in effect when the  
27 listing goes live and when it renews. If a seller selects more than one category for a  
28

1 listing, insertion and advanced listing upgrade fees apply for each category.<sup>xviii</sup> For  
2 any completed sale, it charges a “final value fee” that ranges from 5.25% to 10% of  
3 the final sale price of the item. Sellers have the option of purchasing, at additional  
4 cost, features “to differentiate their listings, such as a border or bold-faced type.”<sup>xix</sup>

5 49. eBay’s business model and pricing is designed so that its Marketplaces  
6 business is successful when its merchants are successful. eBay reports that the  
7 majority of its Marketplace revenue “comes from a take rate on the Gross  
8 Merchandise Volume, or GMV, of transactions closed on our Marketplaces trading  
9 platforms.”<sup>xx</sup> In 2014, eBay generated \$82.95 billion in GMV. eBay defines GMV as  
10 the total value of all successfully closed transactions between users on Marketplaces  
11 platforms (excluding eBay's classifieds websites, brands4friends and Shopping.com)  
12 during the applicable period, regardless of whether the buyer and seller actually  
13 consummated the transaction.”<sup>xxi</sup>

14 50. eBay also generates revenue through a company named PayPal, which it  
15 owns and allows users to process their purchases. PayPal deducts, as a fee for each  
16 transaction that it processes, 1.9% to 2.9% of the transaction amount, plus a flat fee of  
17 \$0.30. This gives eBay an added incentive to increase both the volume and the price  
18 of the goods sold on its website.<sup>xxii</sup>

19 51. eBay promotes and facilitates the sale of an enormous number of Fake  
20 Products through ebay.com, which provides eBay manufacturers, distributors and  
21 unauthorized sellers of Fake Products with a global marketplace for such goods, and  
22 provides online marketing, credit card processing, financing, and shipping services  
23 that effectuate the sale of the Fake Products. Recognizing that the sale of Fake  
24 Products on its website may significantly contribute to eBay’s reported profits, eBay’s  
25 policies and practices, among other things, (i) promote the unlawful activities of its  
26 unauthorized sellers by soliciting buyer to purchase Fake Products, and (ii) protect  
27 and conceal the identity of unauthorized sellers of Fake Products so that eBay can  
28

1 manufacture the false optic that it does not know or suspect the rampant and on-going  
2 trademark infringement by many thousands of its sellers. eBay exercises significant  
3 control over the unauthorized sellers' means of trademark infringement by means of  
4 its significant control over the transactions and listings facilitated by and conducted  
5 through its website. Given that control, eBay has the ability to, among other things,  
6 identify and take action against recidivist counterfeiters based on activities on  
7 ebay.com.

8 **F. Intentional Use on ebay.com of Counterfeit Marks That Infringe On**  
9 **Plaintiff's Marks By Defendants**

10 52. eBay expressly recognizes that the protection of a company's intellectual  
11 property, including its trademarks (in the case of eBay the trademarks covering the  
12 eBay and PayPal names), patents, copyrights, domain names, trade dress and trade  
13 secrets as critical to the company's success. For that reason, eBay aggressively  
14 protects its intellectual property rights by relying on federal, state and common law  
15 rights in the U.S. and internationally, as well as a variety of administrative  
16 procedures.<sup>xxiii</sup>

17 53. eBay acknowledges that the listing or sale by eBay users of items that  
18 allegedly infringe the intellectual property rights of rights owners, including pirated or  
19 counterfeit items, may harm the business of the lawful rights owners. eBay reports  
20 that "the listing or sale by our merchants of 'counterfeit' goods, has resulted and may  
21 continue to result in allegations of civil or criminal liability for unlawful activities  
22 against eBay (including the employees and directors of our various entities) involving  
23 activities carried out by users through eBay's services. In a number of circumstances,  
24 third parties, including government regulators and law enforcement officials, have  
25 alleged that eBay services aid and abet violations of certain laws, including laws  
26 regarding the sale of counterfeit items."<sup>xxiv</sup>

1           54. In addition, eBay reports that allegations of infringement of intellectual  
2 property rights, including but not limited to counterfeit items, have resulted in  
3 threatened and actual litigation from time to time by rights owners, such as Lunatik.<sup>xxv</sup>  
4 “Plaintiffs in these and similar suits seek, among other remedies, injunctive relief and  
5 damages. Statutory damages for copyright or trademark violations could range up to  
6 \$150,000 per copyright violation and \$2,000,000 per trademark violation in the  
7 United States. In the past, eBay has paid substantial amounts in connection with  
8 resolving certain trademark and copyright suits.”<sup>xxvi</sup>

9           55. eBay expressly acknowledges and agrees that unauthorized copies or  
10 fake products that are advertised and appear on its website may infringe on the  
11 manufacturer’s trademark. For example, it is eBay’s publicly stated position that an  
12 item that has a company’s name or logo on it, but not made or endorsed by the owner  
13 of the trademark, is not allowed on eBay. “These kinds of things may infringe on  
14 someone’s copyright or trademark.” ebay.com warns: “[m]ake sure your listing  
15 follows these guidelines. If it doesn’t, it may be removed, and you may be subject to a  
16 range of other actions, including limits of your buying and selling privileges and  
17 suspension of your account.”<sup>xxvii</sup>

18           56. Notwithstanding eBay’s knowledge of these claims and practices by its  
19 sellers, eBay publicly admits that it has resisted modifying its business practices  
20 because such changes could/would increase costs, lower revenue, make eBay’s  
21 websites and mobile platforms less convenient to customers, and require eBay to  
22 spend substantial resources to take additional protective measures or discontinue  
23 certain service offerings in order to combat these known and acknowledged user  
24 practices.<sup>xxviii</sup>

25           57. eBay is well aware that: (i) it directly solicits eBay buyers to purchase  
26 obvious counterfeit Lunatik products from its Unauthorized Sellers, (ii) Unauthorized  
27 Sellers are using ebay.com to list products that display counterfeit marks that infringe  
28

1 on Plaintiff's trademarks; (iii) eBay has an essential role in these infringements, since  
2 it is via ebay.com that the advertisements and offers for sale are communicated to  
3 buyers on its site; (iv) given what ebay.com does and does not state in response to a  
4 shopper's request for Plaintiff's trademarked products is likely to cause confusion as  
5 to the source of the product displayed with a counterfeit mark that infringes on  
6 Plaintiff's trademarks; (v) its practices and policies are designed to protect and  
7 conceal the identity of its sellers and its take down procedures are at best reactionary  
8 rather than proactive; and (vi) changes in its practices, policies and procedures that  
9 would assist trademark owners, such as Plaintiff, by proactively removing Fake  
10 Products and blocking repeat offenders would lead ebay.com to being less attractive  
11 to the sellers and buyers of Counterfeit Products, hurting eBay's reported profits.

12       58. Since at least February 2013, Plaintiff has incurred substantial costs  
13 actively monitoring listings on ebay.com and uncovered evidence that one or more  
14 listings that infringe on Plaintiff's Marks appear on eBay.com almost daily.  
15 Plaintiff's conclusions are consistent with the reported results of a nine-month  
16 investigation by The Counterfeit Report.

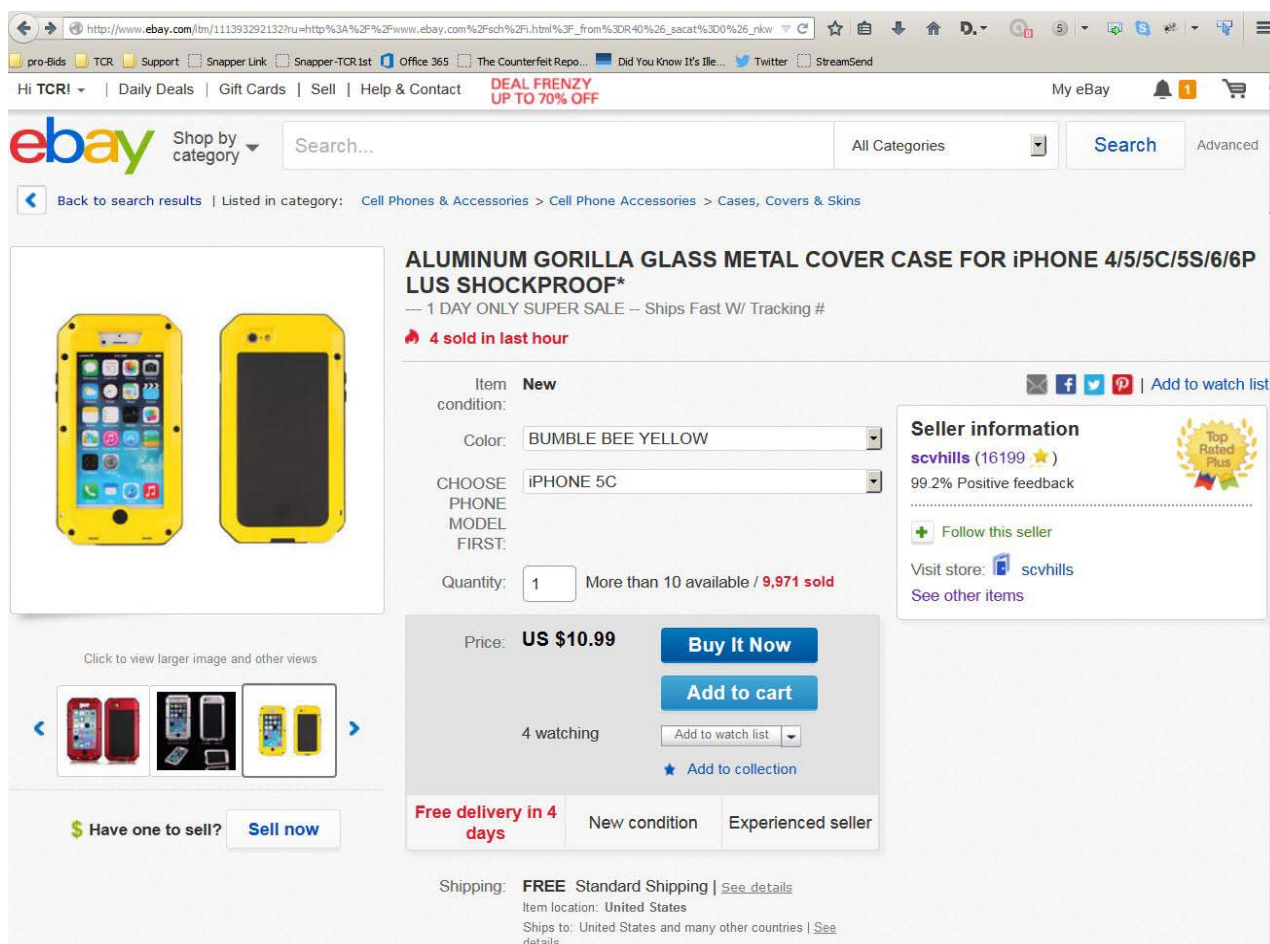
17       59. Since at least February 2013, Plaintiff has sent eBay thousands of notices  
18 that listings on ebay.com by Unauthorized Sellers display counterfeit marks that  
19 infringe on Plaintiff's Marks in connection with the promotion, advertisement, offer  
20 for sale, sale and distribution of obvious counterfeit Lunatik products in violation of  
21 the Lanham Act, as amended. Plaintiff's Marks appear on the products and packaging  
22 described in paragraphs 26 through 38 above.

23       60. Plaintiff and others have repeatedly placed eBay on notice that many of  
24 its Unauthorized Sellers are repeat infringers. Nevertheless, eBay has taken no  
25 effective steps, such as de-listing the Unauthorized Sellers, to prevent these recidivist  
26 Unauthorized Sellers from continuing to operate on eBay and infringing on Plaintiff's  
27 Marks.



## Unauthorized Use of Plaintiff's Marks By Seller 1

61. Set forth below is a listing that appeared on ebay.com in or about 2014, which displays one or more counterfeit marks that infringe on Plaintiff's Mark in connection with an offer for the sale of a Fake Lunatik iPhone case by Defendant Kang. EBay identifies on Kang's listing that Kang has sold 9,971 units of the Fake Lunatik iPhone cases described therein to the public. The listing advertises an "Aluminum Gorilla Metal Cover Case iPhone Case" for \$10.99 in colors never offered by Lunatik.



62. In or about 2014, The Counterfeit Report made several purchases from Defendant Kang in response to the listing above and was shipped by Defendant Kang four iPhone 6 models and three iPhone 5 models in three separate purchases. All of

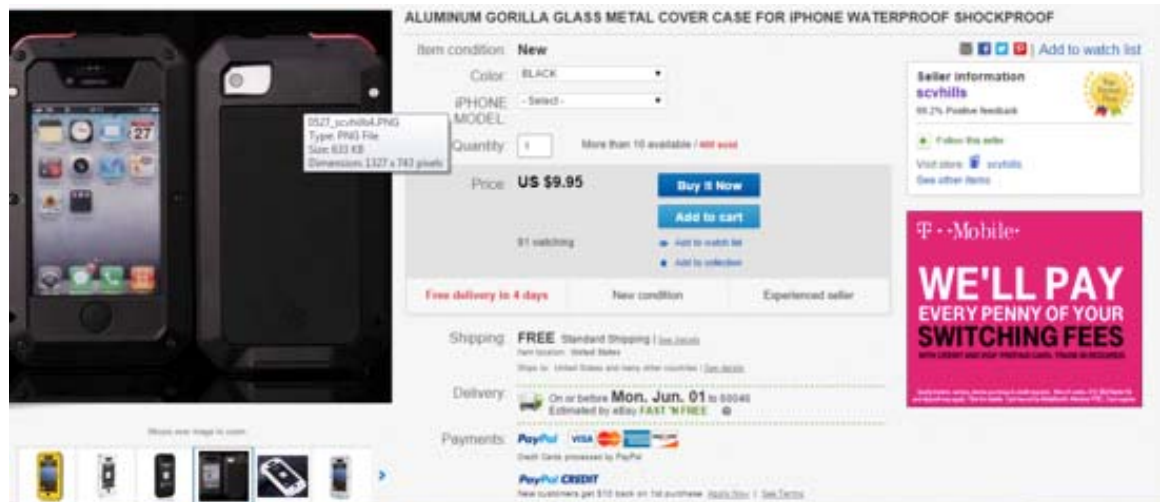
1 the Fake Products shipped by Defendant Kang are aluminum knockoffs absent the  
2 LUNATIK name or logo mark.

3       63. The Fake Lunatik Product advertised mimics the design of the authentic  
4 TAKTIK® Extreme for iPhone 5 with the Corning® Gorilla® Glass Impact Lens For  
5 Screen Protection and bears an exact copy of Lunatik’s federally registered logo  
6 mark. The listing images are all linked to the eBay listing by the product ID in the  
7 URL at the top of the image. The listing was intended to confuse both the ultimate  
8 retail consumer and persons observing the ultimate consumer into believing that it is a  
9 genuine Lunatik product.

10       64. The Counterfeit Report put eBay on notice that the product being sold by  
11 Defendant Kang was a counterfeit of Plaintiff’s iPhone case. “Lunatik does not make  
12 red cases.” Further, The Counterfeit Report informed eBay that “[t]he product is  
13 evidence of a crime and WILL NOT be returned. Returning counterfeit products is  
14 against eBay policy and unlawful.” eBay customer support reviewed The Counterfeit  
15 Report’s request for a refund and declined the request for a refund.

16       65. Though eBay’s policy is not to return counterfeit products<sup>xxix</sup>, upon  
17 information and belief, this is exactly what eBay requires for a consumer to receive a  
18 refund. Fake Products are evidence of a crime. *See* 18 U.S.C.A. § 2320. Contrary to  
19 law, upon reporting a purchased item as counterfeit, the eBay customer is refunded  
20 and instructed to return the product. Instead of taking any action against the  
21 Unauthorized Seller, eBay facilitates the Seller’s receipt back of the Fake Products,  
22 which are likely then resold to another unsuspecting eBay customer.

66. On May 27, 2015, Plaintiff transmitted a NOCI to eBay in response to a listing on ebay.com of Seller 1 with, among other things, Plaintiff's logo mark on an image of a counterfeit aluminum TAKTIK® phone case ("Seller 1 NOCI"). The listing also displays a counterfeit aluminum TAKTIK® phone case in yellow. The listing reports "400 sold." The listing also reports "credit cards are processed by PayPal" and that buyers can also apply and use purchase "PayPal Credit." Buyers applying for PayPal Credit are eligible to receive \$10 back on their first purchase. Shown below is an image of the Seller 1 listing that is the subject of Plaintiff's May 27, 2015 NOCI to eBay.



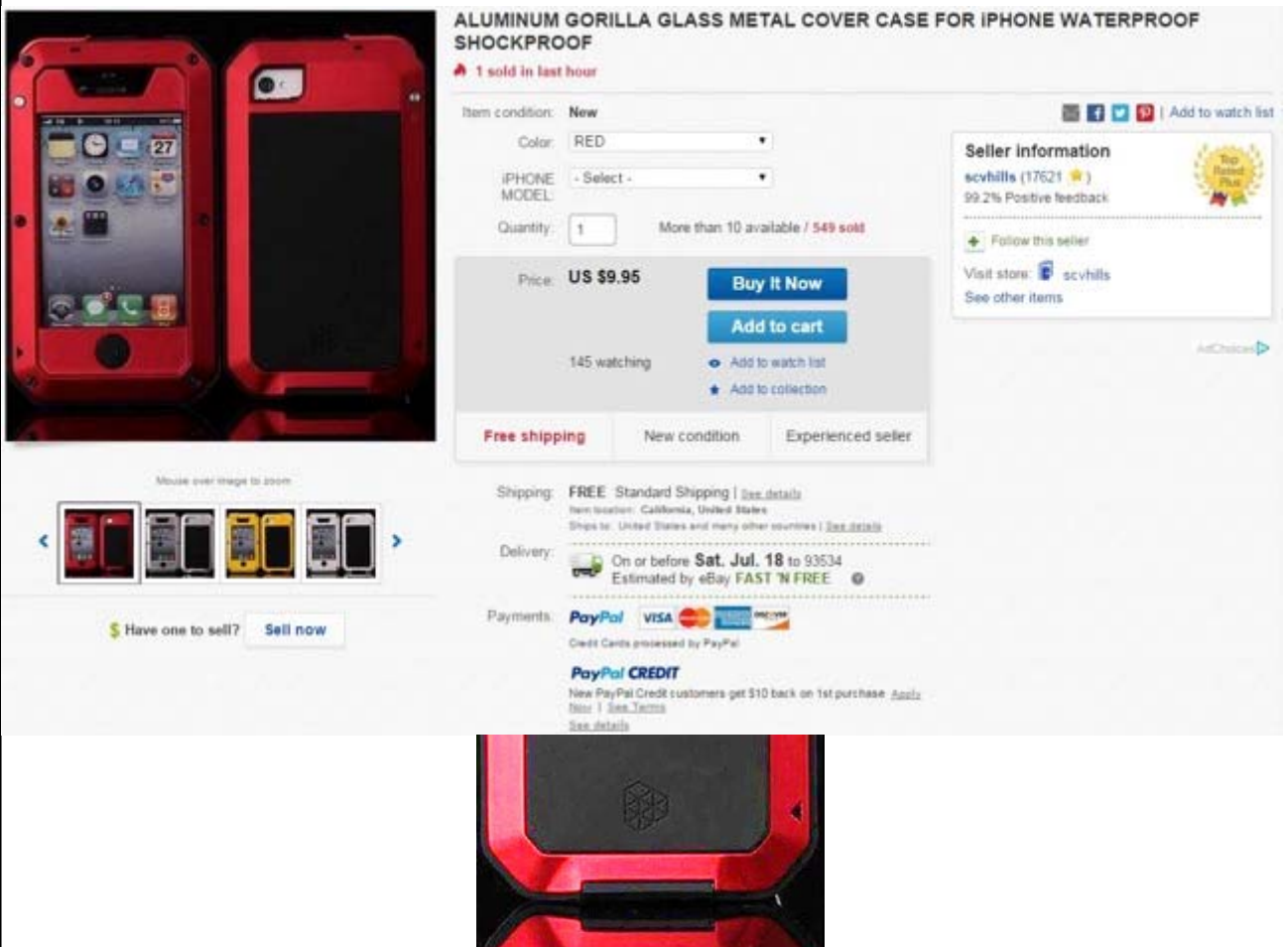
67. Lunatik makes its TAKTIK® phone cases in two colors: white and black. It has repeatedly made this fact known to eBay, and advised it that phone cases offered under the TAKTIK® mark in other colors such as yellow or red are counterfeit goods.

68. Lunatik uses a poly-carbonate plastic material for its TAKTIK® phone perimeters. It does not and has never used Aluminum, and has repeatedly made eBay aware of this fact, and advised it that phone cases offered under the TAKTIK® mark as aluminum are counterfeit.

69. Given that eBay repeatedly has been informed by Lunatik and The Counterfeit Report that TAKTIK® phone cases offered as aluminum are counterfeit

1 and that TAKTIK® phone cases offered in colors such as yellow, silver, gold or red  
 2 are counterfeit, eBay knew, or willfully ignored, that, based on the price, material and  
 3 color of the iPhone cases advertised in the listings that were the subject of the Seller 1  
 4 NOCIs, that the iPhone cases advertised by Seller 1 were Fake Lunatik Products.

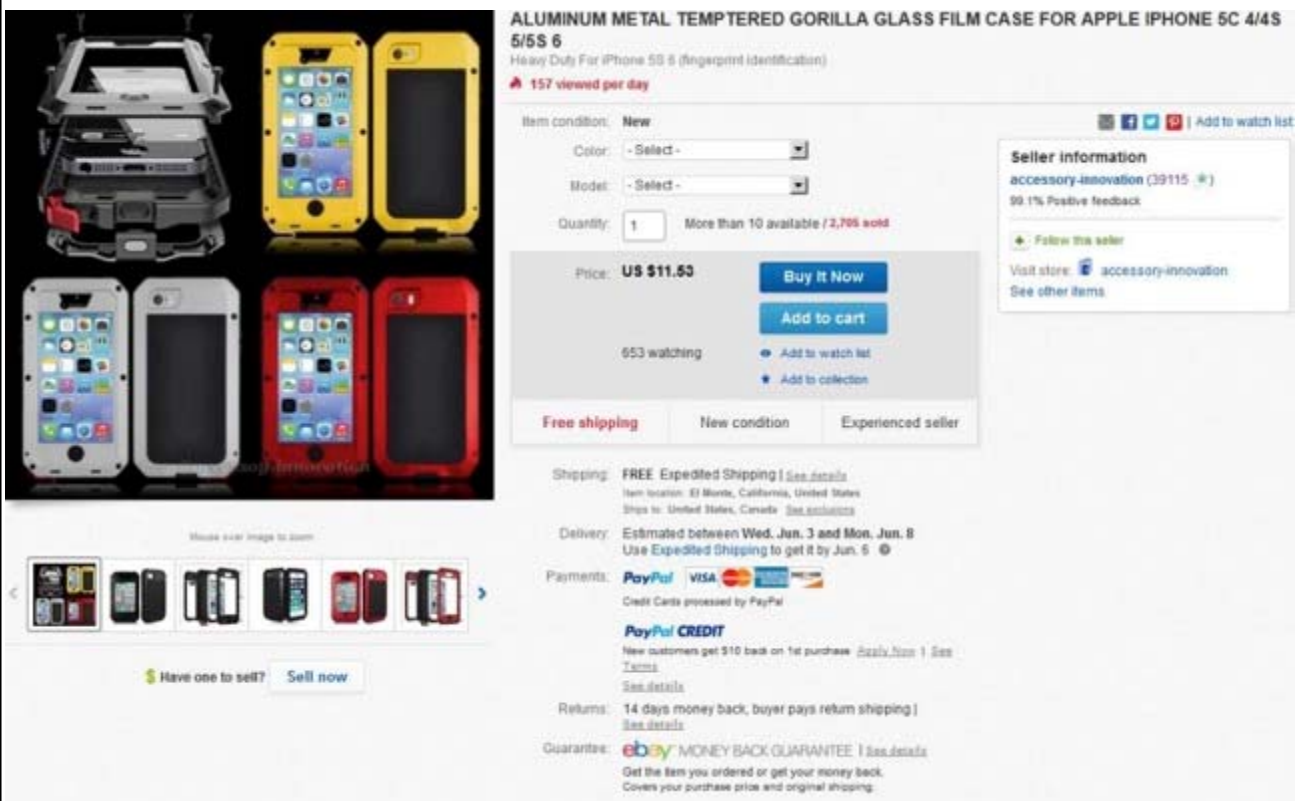
5 70. As evidenced by the July 23, 2015 listing below, eBay has continued to  
 6 allow Seller 1 to sell obvious counterfeit iPhone cases on ebay.com that unlawfully  
 7 infringe on Plaintiff's Marks.



### 24 Unauthorized Use of Plaintiff's Marks By Seller 2

25 71. Set forth below is a listing that appeared on ebay.com in or about 2014  
 26 which displays one or more counterfeit marks that infringe on Plaintiff's Mark in  
 27 connection with an offer for the sale of Fake Lunatik iPhone cases by Seller 2. It was

1 reported on ebay.com that 2,705 units of the Fake Lunatik iPhone case described in  
 2 Seller 2's listing were sold to the public. The listing advertises an "Aluminum Metal  
 3 Tempted Gorilla Glass Film Case For An iPhone 5C 4/4S 5/S 6" for \$11.53 in  
 4 colors never offered by Lunatik. The listing also reports "credit cards are processed  
 5 by PayPal" and that buyers can also apply and use purchase "PayPal Credit." Buyers  
 6 applying for PayPal Credit are eligible to receive \$10 back on their first purchase.



72. Comparing the images in paragraphs 29-34 with the images in  
 paragraph 71, it is evident that the Fake Lunatik Products advertised by Seller 2  
 mimic the design of the authentic TAKTIK® Extreme with the Corning® Gorilla®  
 Glass Impact Lens For Screen Protection and bear an exact copy of Lunatik's  
 federally registered design mark. The listing images are all linked to the eBay listing  
 by the product ID in the URL at the top of the image. The listing was intended to



1 confuse both the ultimate retail consumer and persons observing the ultimate  
2 consumer into believing that it is a genuine Lunatik product.

3       73. The Counterfeit Report made several purchases from Seller 2 in response  
4 to the listing and was shipped by Seller 2 two silver, two red and two yellow  
5 aluminum knockoffs absent the LUNATIK name or design. Plaintiff is informed and  
6 believes that The Counterfeit Report put eBay on notice that the iPhone cases being  
7 listed by Seller 2 were counterfeits of Plaintiff's iPhone cases.

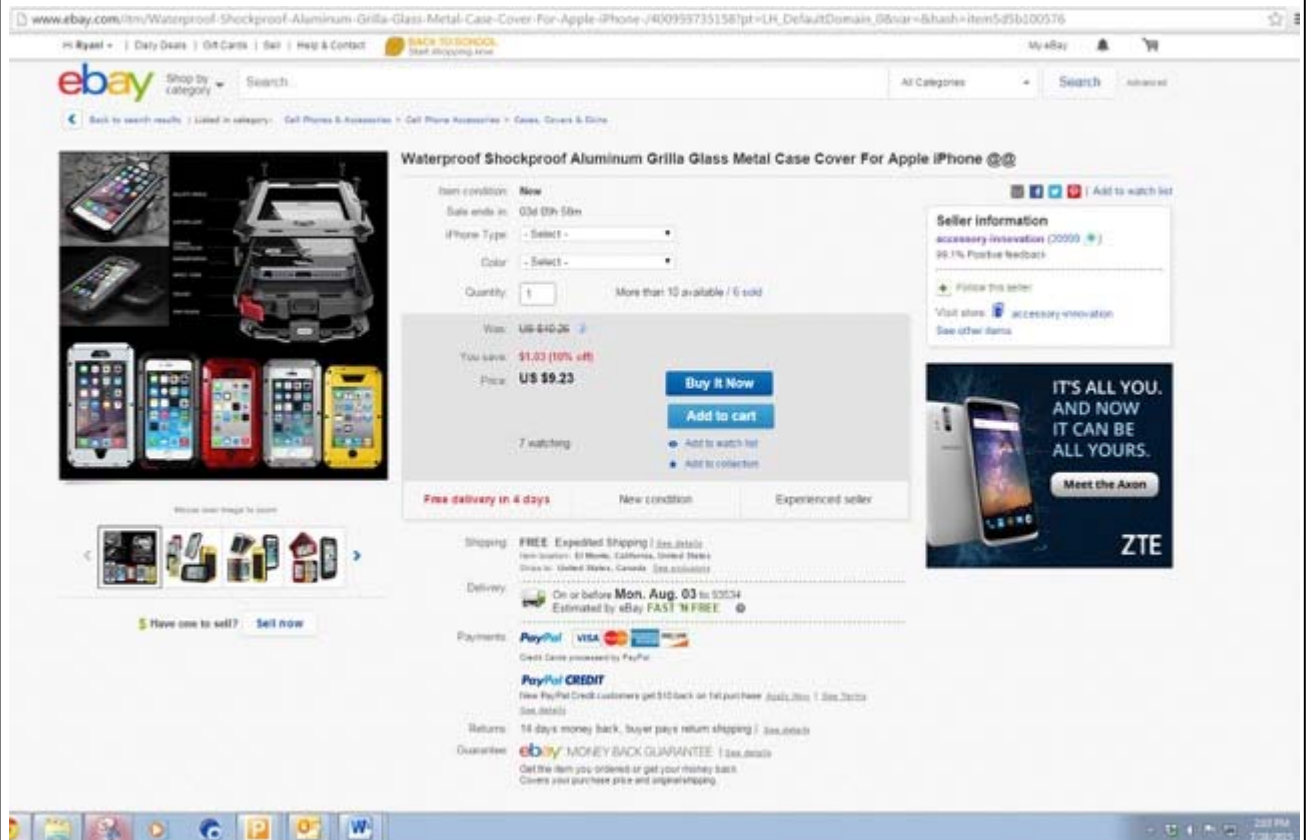
8       74. Lunatik makes its TAKTIK® phone cases in two colors: white and  
9 black. It has repeatedly made this fact known to eBay, and advised it that TAKTIK®  
10 phone cases offered in other colors such as yellow or red are counterfeit goods.

11       75. Lunatik uses a poly-carbonate plastic material for its TAKTIK® phone  
12 perimeters. It does not and has never used Aluminum, and has repeatedly made eBay  
13 aware of this fact, and advised it that TAKTIK® phones offered as aluminum are  
14 counterfeit.

15       76. On July 13, 2015, Plaintiff transmitted a NOCI to eBay in response to  
16 listings on ebay.com of Seller 2 for the sale of obvious counterfeit Lunatik products as  
17 described more particularly herein ("Seller 2 NOCI").

18       77. Given that eBay repeatedly has been informed by Lunatik and The  
19 Counterfeit Report that TAKTIK® phone cases offered as aluminum are counterfeit  
20 and that TAKTIK® phone cases offered in colors such as yellow, silver, gold or red  
21 are counterfeit, eBay knew, or willfully ignored, that, based on the price, material and  
22 color of the iPhone cases advertised in the listings that were the subject of the Seller 2  
23 NOCIs, that the iPhone cases advertised by Seller 2 were Fake Lunatik Products.

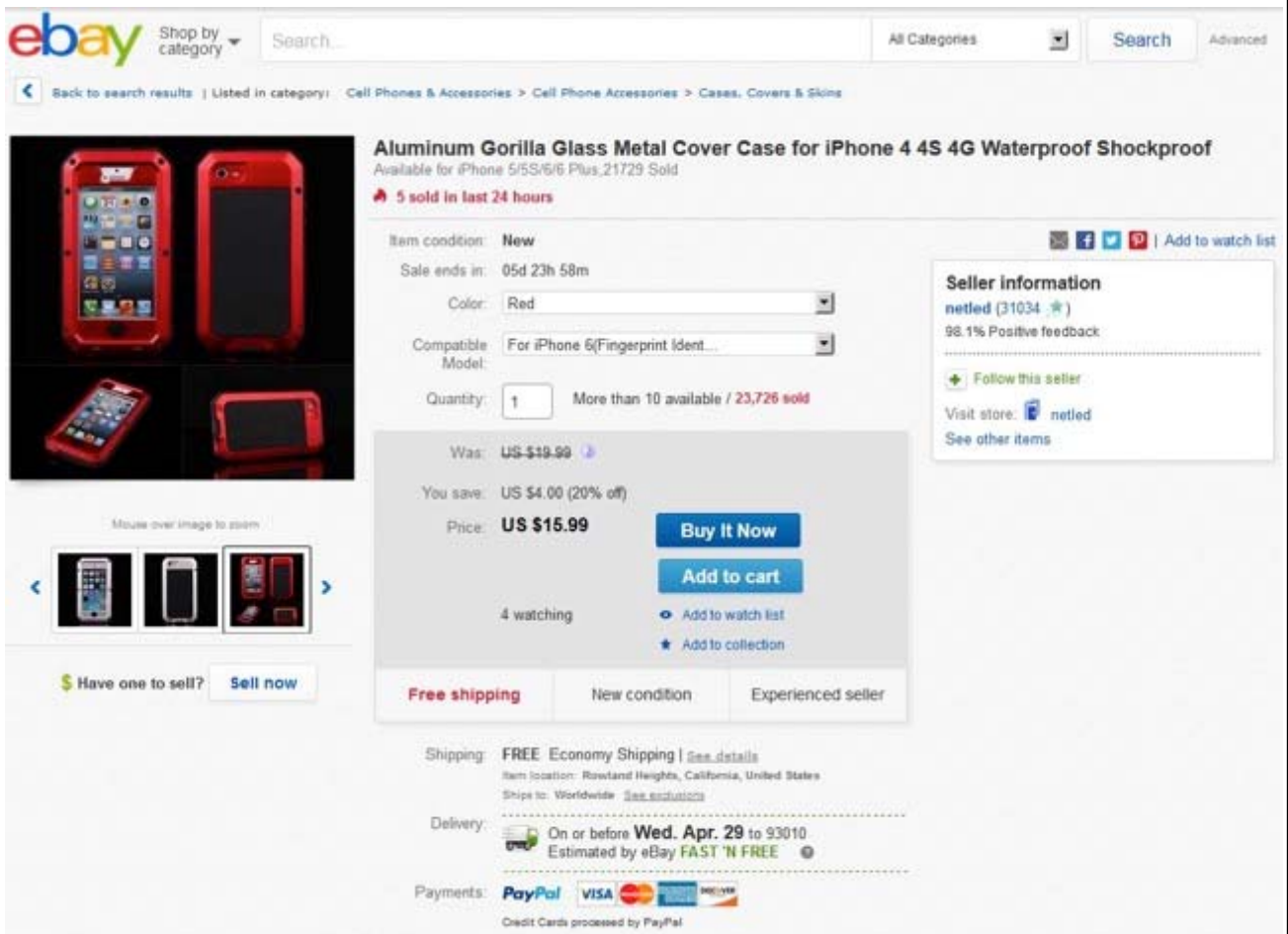
78. As evidenced by the July 28, 2015 listing below, eBay has continued to allow Seller 2 to sell obvious counterfeit iPhone cases on ebay.com that unlawfully infringe on Plaintiff's Marks.



### **Unauthorized Use of Plaintiff's Marks By Seller 3**

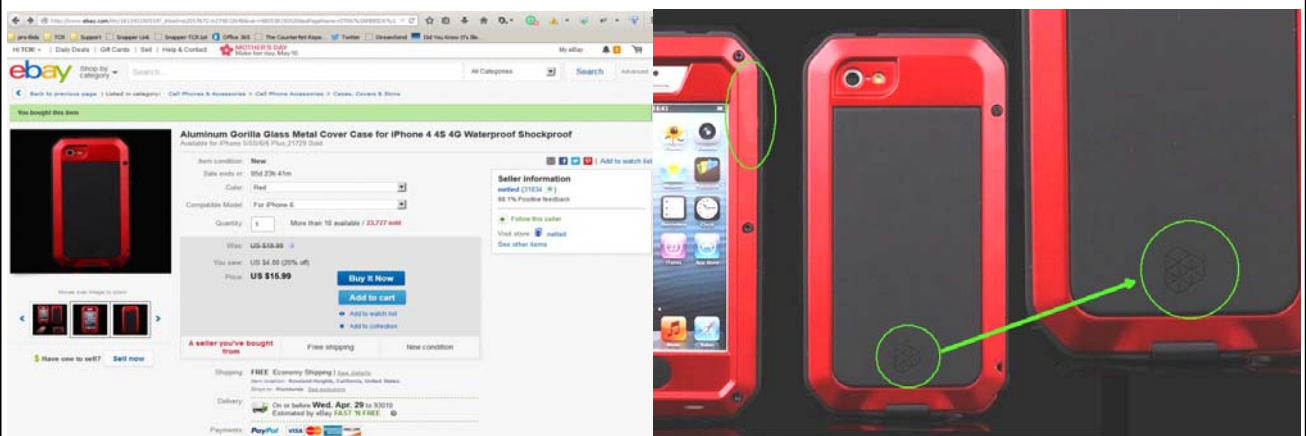
79. Set forth below is a listing that appeared on eBay in or about 2014 for the sale of Fake Lunatik iPhone cases to the public by Defendant Chen. As reported by ebay.com, Defendant Chen, Seller 3, sold 23,726 units of the advertised Fake Lunatik iPhone case based on this listing. The listing advertises "Aluminum Gorilla Metal Cover Case iPhone Case" for \$15.99, uses the LUNATIK logo mark, and shows a counterfeit red TAKTIK® model case, a color never offered by Lunatik for that model.





80. The Counterfeit Report made several purchases from Seller 3 in response to the listing and was shipped by Seller 3 iPhone 5 & 6 models in red, yellow, rose and white. All of the Fake Products shipped by Defendant Chen are aluminum knockoffs absent the LUNATIK name or logo mark.

81. On May 19 and 27, 2015, Plaintiff transmitted NOCIs to eBay in response to listings on ebay.com of Seller 3 which display, among other things, images of a counterfeit aluminum TAKTIK® phone case displaying Plaintiff's logo mark ("Seller 3 NOCIs"). In one listing shown below, the counterfeit iPhone case is displayed in red. One listing reports "23,952 sold." The listings also report that "credit cards processed by PayPal" and that buyers can apply and use purchase "PayPal Credit." Buyers applying for PayPal Credit are eligible to receive \$10 back on their first purchase.



Seller assumes all responsibility for this listing.

### Shipping and handling

Item location: Rowland Heights, California, United States

Shipping to: Worldwide

Excludes: Alaska/Hawaii, US Protectorates, APO/FPO, Africa, Central America and Caribbean, Afghanistan, Armenia, Azerbaijan Republic, Bangladesh, Bhutan, China, Georgia, India, Kazakhstan, Kyrgyzstan, Maldives, Mongolia, Nepal, Pakistan, Russian Federation, Sri Lanka, Tajikistan, Turkmenistan, Uzbekistan, Bahrain, Iraq, Israel, Jordan, Kuwait, Lebanon, Oman, Qatar, Saudi Arabia, United Arab Emirates, Yemen, American Samoa, Cook Islands, Fiji, French Polynesia, Guam, Kiribati, Marshall Islands, Micronesia, Nauru, New Caledonia, Niue, Palau, Papua New Guinea, Solomon Islands, Tonga, Tuvalu, Vanuatu, Wallis and Futuna, Western Samoa, Bermuda, Greenland, Saint Pierre and Miquelon, Albania, Andorra, Austria, Bosnia and Herzegovina, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, Germany, Gibraltar, Guernsey, Hungary, Iceland, Jersey, Latvia, Liechtenstein, Lithuania, Luxembourg, Macedonia, Montenegro, Netherlands, Poland, Portugal, Romania, San Marino, Serbia, Slovakia, Slovenia, Svalbard and Jan Mayen, Switzerland, Ukraine, Vatican City State, Bolivia, Colombia, Ecuador, Falkland Islands (Islas Malvinas), French Guiana, Guyana, Paraguay, Peru, Suriname, Uruguay, Venezuela, Brunei Darussalam, Cambodia, Hong Kong, Indonesia, Laos, Macau, Malaysia, Philippines, Taiwan, Vietnam, PO Box

Quantity:  Change country:  ZIP Code:  [Get Rates](#)

There are 4,845 items available. Please enter a number less than or equal to 4,845.

Shipping and handling	To	Service	Delivery*
Free shipping	United States	Economy Shipping (USPS Standard Post®)	On or before <b>Wed. Apr. 29</b> to 93010 per eBay <b>FAST 'N FREE</b>

\* Estimated delivery dates include seller's handling time, origin ZIP Code, destination ZIP Code and time of acceptance and will depend on shipping service selected and receipt of cleared payment. Delivery times may vary, especially during peak periods.

82. Comparing the images in paragraphs 29-34 with the images in paragraphs 79 and 81, it is evident that the Fake Lunatik Products advertised by Seller 3 mimic the design of the authentic TAKTIK® Extreme for iPhone with the

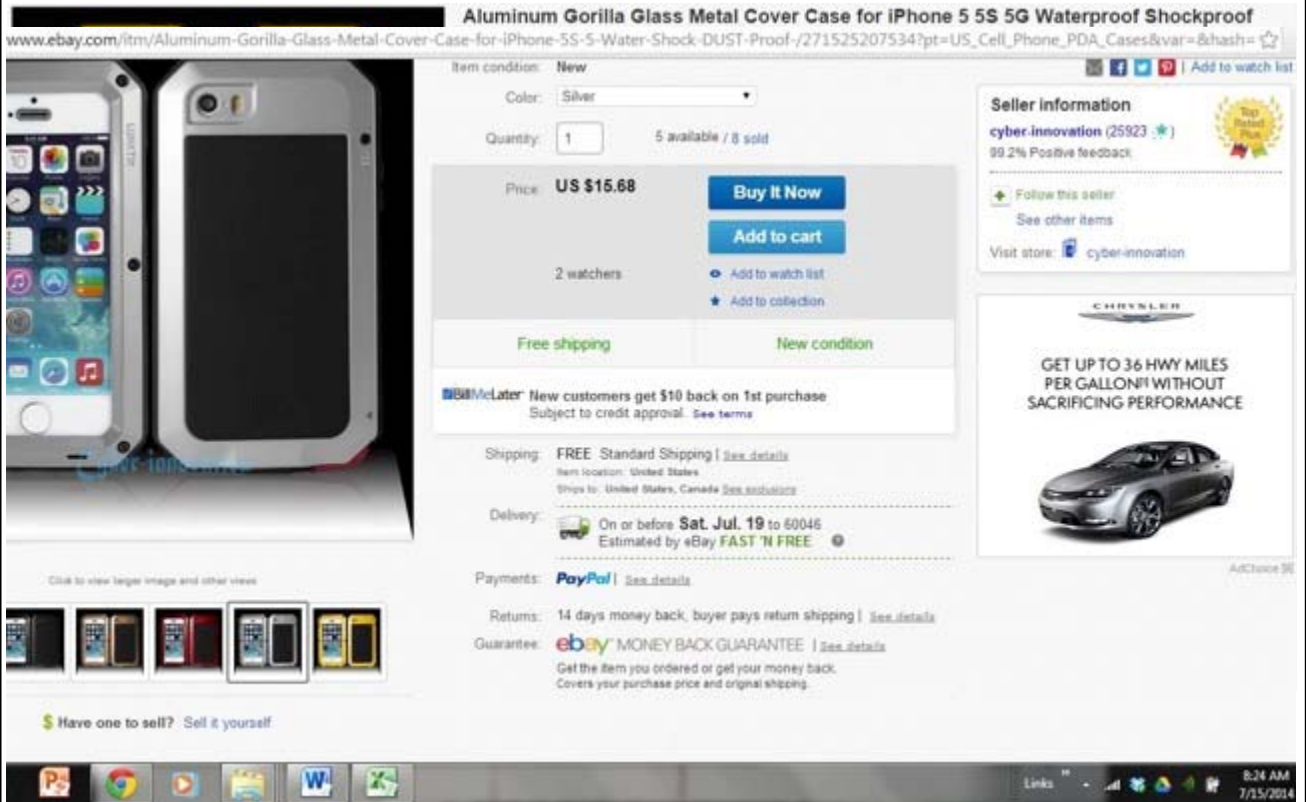
1 Corning® Gorilla® Glass Impact Lens For Screen Protection and bear an exact copy  
2 of Lunatik's federally registered design mark. The Fake Products were intended to  
3 confuse both the ultimate retail consumer and persons observing the ultimate  
4 consumer into believing that it is a genuine Lunatik product

5 83. Lunatik makes its TAKTIK® phone cases in two colors: white and  
6 black. It has repeatedly made this fact known to eBay, and advised it that TAKTIK®  
7 phone cases offered in other colors such as yellow, or red are counterfeit goods.

8 84. Lunatik uses a poly-carbonate plastic material for its TAKTIK® phone  
9 perimeters. It does not and has never used Aluminum, and has repeatedly made eBay  
10 aware of this fact, and advised it that TAKTIK® phones offered as aluminum are  
11 counterfeit.

12 85. Given that eBay repeatedly has been informed by Lunatik and The  
13 Counterfeit Report that TAKTIK® phone cases offered as aluminum are counterfeit  
14 and that TAKTIK® phone cases offered in colors such as yellow, silver, gold or red  
15 are counterfeit, eBay knew, or willfully ignored, that, based on the price, material and  
16 color of the iPhone cases advertised in the listings that were the subject of the Seller 3  
17 NOCIs, that the iPhone cases advertised by Seller 3 were Fake Lunatik Products.

86. As evidenced by the July 23, 2015 listing below that unlawfully infringes on Plaintiff's Marks, eBay has continued to allow Seller 3 to list obvious counterfeit iPhone cases on ebay.com.



#### **Unauthorized Use of Plaintiff's Marks By Seller 4**

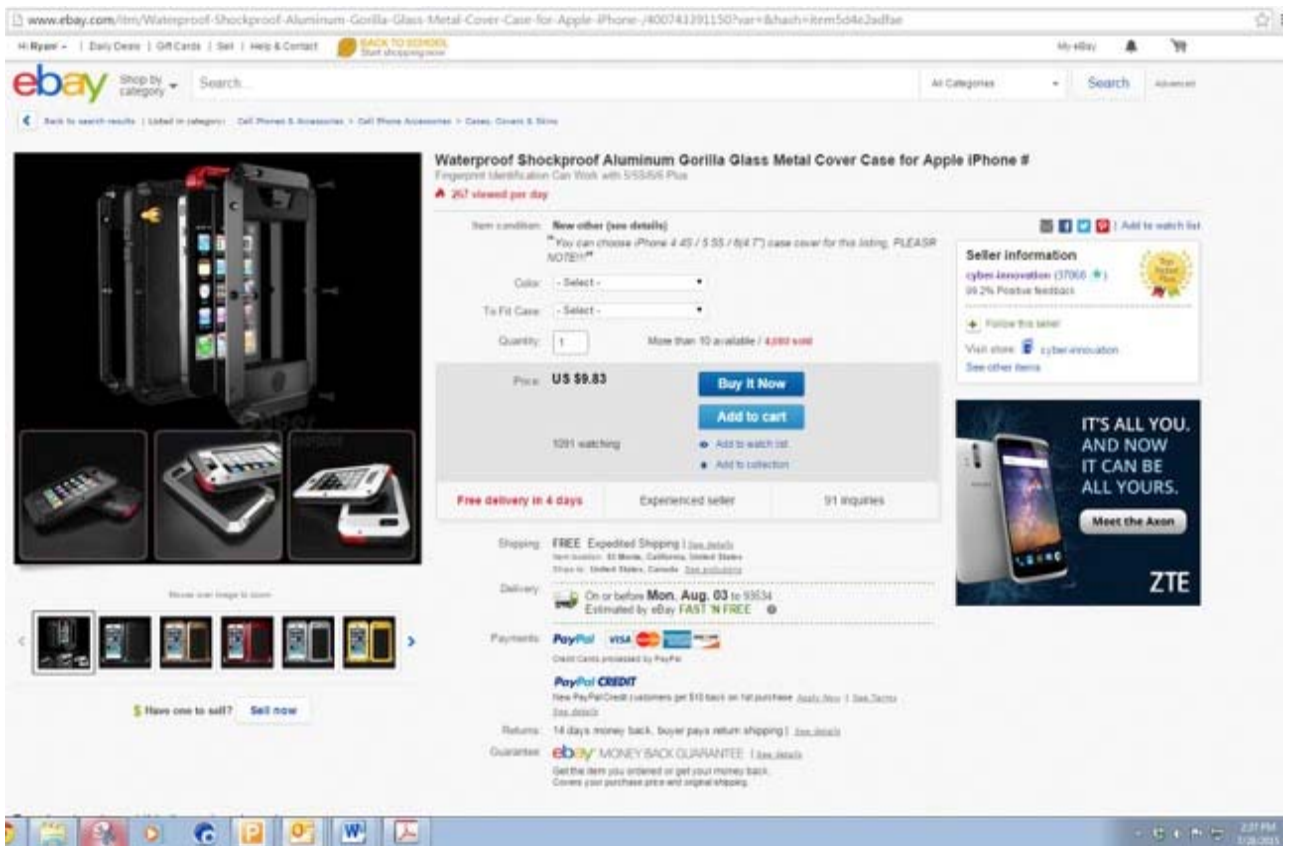
87. Set forth below is a listing that appeared on ebay.com on July 15, 2014 which displays one or more counterfeit marks that infringe on Plaintiff's Mark in connection with an offer for the sale of Fake Lunatik iPhone cases by Seller 4. It was reported on ebay.com that eight units of the Fake Lunatik iPhone case described in Seller 4's listing were sold to the public. The listing advertises an "Aluminum Gorilla



1 Glass Metal Cover Case for iPhone 5s 5 Water Shock DUST Proof” for \$15.68 in  
2 gold, silver, red and yellow, colors never offered by Lunatik.

3 88. On July 15, 2014, Plaintiff transmitted multiple NOCIs to eBay in  
4 response to listings on ebay.com of Seller 4 for the sale of obvious counterfeit Lunatik  
5 products as described more particularly herein (“Seller 4 NOCIs”). As evidenced by  
6 the July 28, 2015 listing below, eBay continues to allow Seller 4 to list for sale  
7 obvious counterfeit iPhone cases on ebay.com that unlawfully infringe on Plaintiff’s  
8 Marks.





89. Comparing the images in paragraphs 29-34 with the images in paragraphs 87 and 88, it is evident that the Fake Lunatik Products advertised by Seller 4 mimic the design of the authentic TAKTIK® Extreme for iPhone with the Corning® Gorilla® Glass Impact Lens For Screen Protection and bear an exact copy of Lunatik's federally registered design mark. The Fake Products were intended to confuse both the ultimate retail consumer and persons observing the ultimate consumer into believing that it is a genuine Lunatik product.

1        90. Lunatik makes its TAKTIK® iPhone cases in two colors: white and  
2 black. It has repeatedly made this fact known to eBay, and advised it that TAKTIK®  
3 phone cases offered in other colors such as yellow or red are counterfeit goods.

4        91. Lunatik uses a poly-carbonate plastic material for its TAKTIK® phone  
5 perimeters. It does not and has never used Aluminum, and has repeatedly made eBay  
6 aware of this fact, and advised it that TAKTIK® phones offered as aluminum are  
7 counterfeit.

8        92. Given that eBay repeatedly has been informed by Lunatik and The  
9 Counterfeit Report that TAKTIK® phone cases offered as aluminum are counterfeit  
10 and that TAKTIK® phone cases offered in colors such as yellow, silver, gold or red  
11 are counterfeit, eBay knew, or willfully ignored, that, based on the price, material and  
12 color of the iPhone cases advertised in the listings that were the subject of the Seller 4  
13 NOCIs, that the iPhone cases advertised by Seller 4 were Fake Lunatik Products.

14                    **Unauthorized Use of Plaintiff's Marks By Seller 5**

15        93. Seller 5 has had multiple listings on ebay.com which display one or more  
16 counterfeit marks that infringe on Plaintiff's Marks in connection with an offer for the  
17 sale of obvious Fake Lunatik iPhone cases by Seller 5. According to The Counterfeit  
18 Report, Seller 5 sold The Counterfeit Report three iPhone cases "listed with the  
19 LUNATIK design logo" but sent to The Counterfeit Report three counterfeit iPhone  
20 cases. As reported on ebay.com, as of May 29, 2015, Seller 5 had sold 8,208 units of  
21 the Fake Lunatik iPhone cases described in Seller 5's listings on ebay.com. Plaintiff  
22 is informed and believes that The Counterfeit Report put eBay on notice that the  
23 iPhone cases being sold by Seller 5 were counterfeits of Plaintiff's iPhone cases.

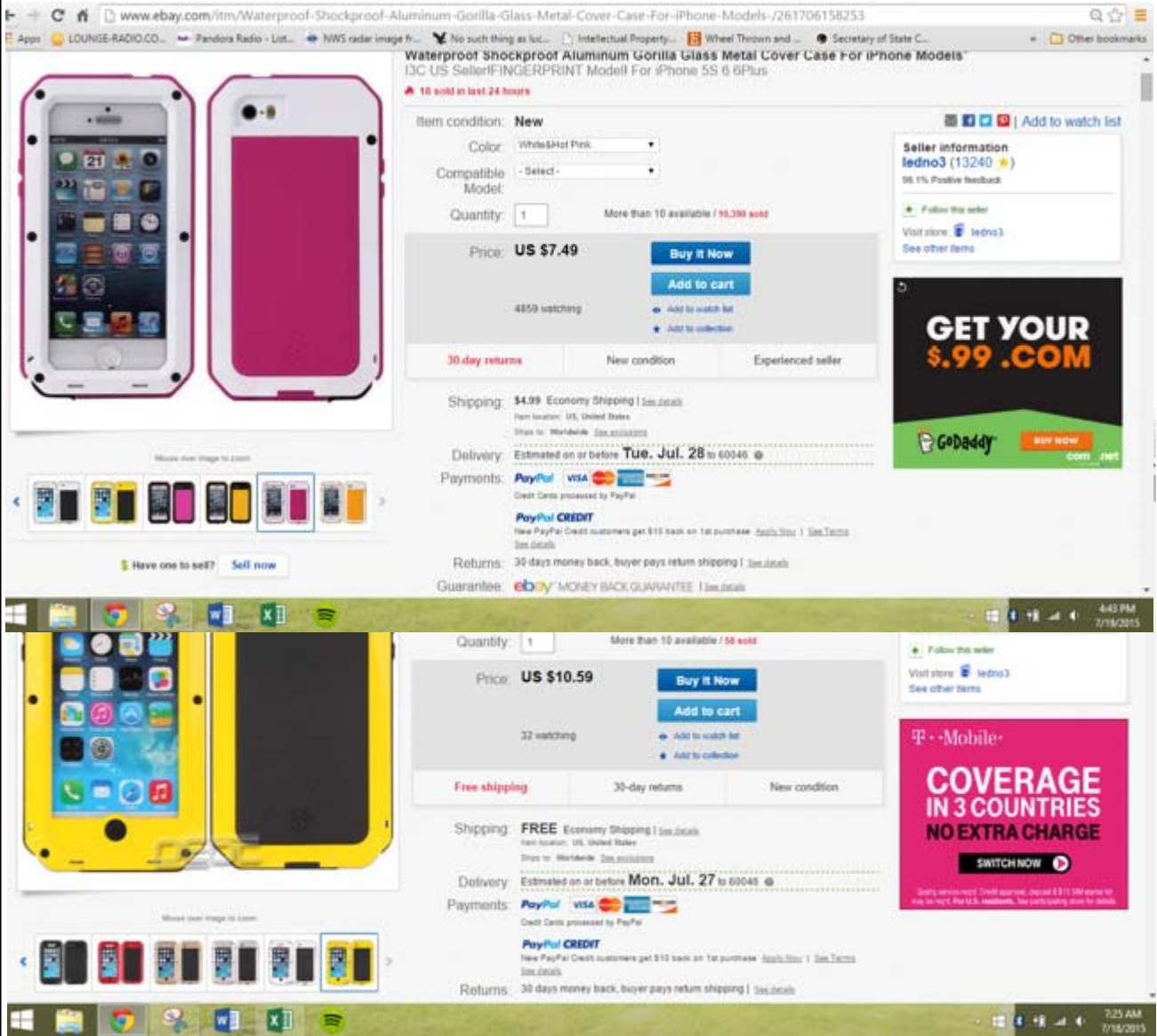
24        94. Set forth below is a listing that appeared on ebay.com on July 18, 2015  
25 which displays one or more counterfeit marks that infringe on Plaintiff's Mark in  
26 connection with an offer for the sale of Fake Lunatik iPhone cases by Seller 5. It was  
27 reported on ebay.com that 58 units of the Fake Lunatik iPhone case described in  
28



1 Seller 5's listing were sold to the public. The listing advertises a "Waterproof  
2 Shockproof Aluminum Gorilla Metal Cover Case For iPhone Models. Available for  
3 iPhone 6 + 6PLUS + 4/4S/5/5S/5C" for \$10.59. As of the date of the listing,  
4 Plaintiff's iPhone case for iPhone 6 and 6Plus was not available for sale; it could only  
5 be pre-ordered. The listing offers iPhone cases for other iPhone models either not  
6 manufactured by Plaintiff and/or in colors never offered by Lunatik. The listing also  
7 reports "credit cards are processed by PayPal" and that buyers can also apply and use  
8 purchase "PayPal Credit." Buyers applying for PayPal Credit are eligible to receive  
9 \$10 back on their first purchase.

10 95. On or about July 17, 2015, Plaintiff transmitted NOCI to eBay in  
11 response to Seller 5 listings 252029571090 and 261912044349 on ebay.com offering  
12 for sale obvious counterfeit Lunatik iPhone cases. In response, ebay.com reported on  
13 July 17, 2015 "[w]e are pleased to inform you that [listings 252029571090 and  
14 261912044349] you reported have been removed from eBay in response to the Notice  
15 of Claimed Infringement you recently sent. Days later, on or about July 20, 2015,  
16 Plaintiff transmitted NOCI to eBay in response to Seller 5 listings 261896177346,  
17 261705267694 and 261706158253 on ebay.com offering for sale obvious counterfeit  
18 Lunatik iPhone cases. In response, ebay.com reported on July 20, 2015 "[w]e are  
19 pleased to inform you that [listings 261896177346, 261705267694 and  
20 261706158253] you reported have been removed from eBay in response to the Notice  
21 of Claimed Infringement you recently sent. Plaintiff is informed and believes that as  
22 of July 27, 2015, eBay was allowing Seller 5 to continue to sell obvious counterfeit  
23 iPhone cases that unlawfully infringe on Plaintiff's Marks using the name ledno8.

96. As evidenced by the listing below, as of July 19, 2015, eBay has continued to allow Seller 5 to sell obvious counterfeit iPhone cases on ebay.com that unlawfully infringe on Plaintiff's Marks.



97. Comparing the images in paragraphs 29-34 with the images in paragraphs 94 and 96, it is evident that the Fake Lunatik Products advertised by Seller 5 mimic the design of the authentic TAKTIK® Extreme for iPhone with the Corning® Gorilla® Glass Impact Lens For Screen Protection and bear an exact copy of Lunatik's federally registered design mark. The Fake Products were intended to

1 confuse both the ultimate retail consumer and persons observing the ultimate  
2 consumer into believing that it is a genuine Lunatik product.

3 98. Lunatik makes its TAKTIK® phone cases in two colors: white and  
4 black. It has repeatedly made this fact known to eBay, and advised it that TAKTIK®  
5 phone cases offered in other colors such as yellow or red are counterfeit goods.

6 99. Lunatik uses a poly-carbonate plastic material for its TAKTIK® phone  
7 perimeters. It does not and has never used Aluminum, and has repeatedly made eBay  
8 aware of this fact, and advised it that TAKTIK® phones offered as aluminum are  
9 counterfeit.

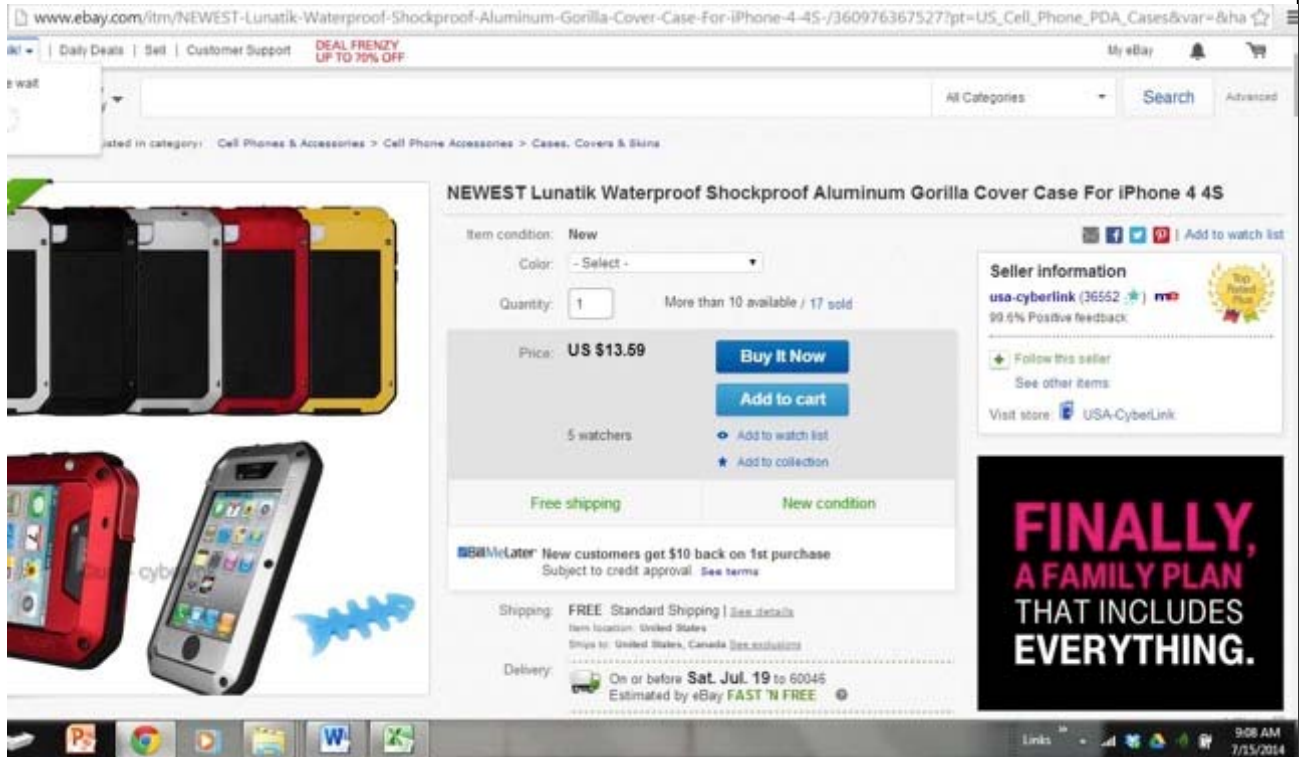
10 100. Given that eBay repeatedly has been informed by Lunatik and The  
11 Counterfeit Report that TAKTIK® phone cases offered as aluminum are counterfeit  
12 and that TAKTIK® phone cases offered in colors such as yellow, silver, gold or red  
13 are counterfeit, eBay knew, or willfully ignored, that, based on the price, material and  
14 color of the iPhone cases advertised in the listings that were the subject of the Seller 5  
15 NOCIs described above, that the iPhone cases advertised by Seller 5 were Fake  
16 Lunatik Products.

17 **Unauthorized Use of Plaintiff's Marks By Seller 6**

18 101. Seller 6 has had multiple listings on ebay.com which display one or more  
19 counterfeit marks that infringe on Plaintiff's Marks in connection with an offer for the  
20 sale of an obvious Fake Lunatik iPhone case by Seller 6.

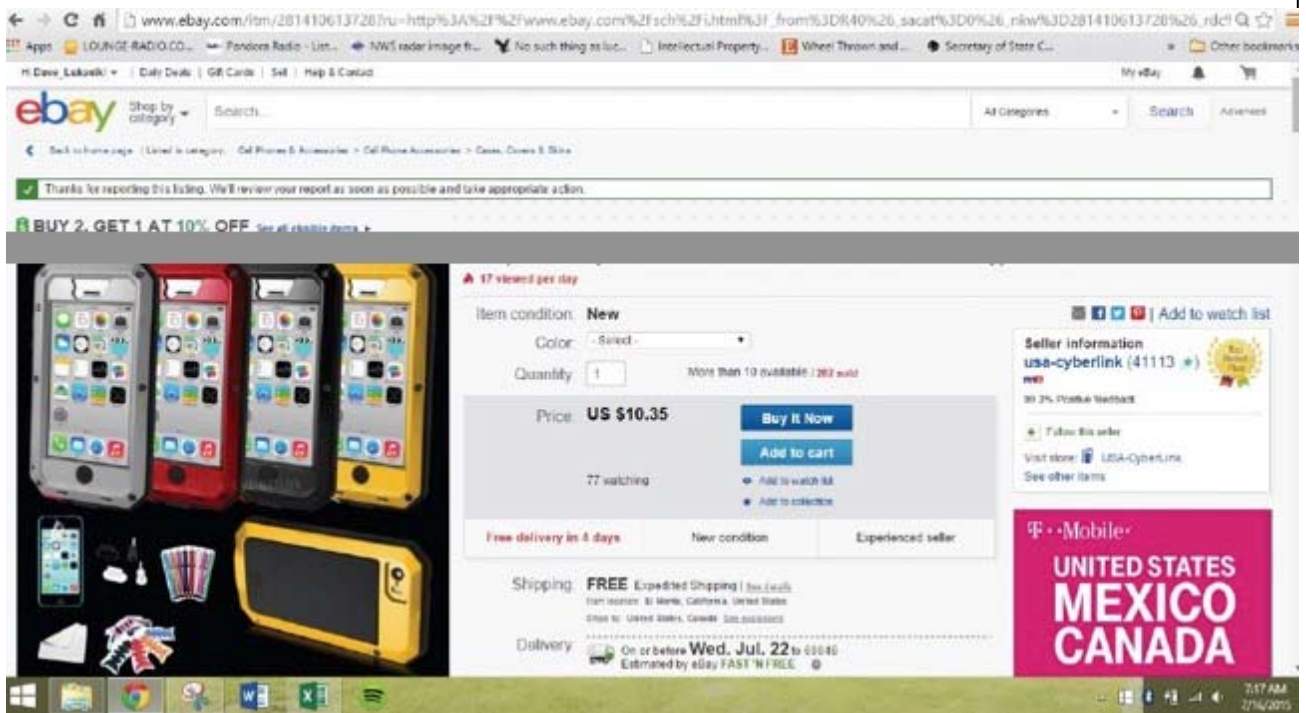
21 102. Set forth below is a listing that appeared on ebay.com on or about  
22 July 15, 2014 which displays one or more counterfeit marks that infringe on  
23 Plaintiff's Mark in connection with an offer for the sale of Fake Lunatik iPhone cases  
24 by Seller 6. It was reported on ebay.com that seventeen units of the Fake Lunatik  
25 iPhone case described in Seller 6's listing were sold to the public. The listing  
26 advertises the "NEWEST Lunatik Waterproof Shockproof Aluminum Gorilla Cover  
27  
28

Case For iPhone 4 4s” for \$13.59. The listing offers iPhone cases for other iPhone models in gold, silver, red and yellow, colors never offered by Lunatik



103. On or about July 15, 2014 and June 10, 2015, Plaintiff transmitted NOCIs to eBay in response to Seller 6 listings on ebay.com offering for sale obvious counterfeit Lunatik iPhone cases (“Seller 6 NOCIs”). As evidenced by the listing below, as of July 16, 2015, eBay has continued to allow Seller 6 to sell obvious counterfeit iPhone cases on ebay.com that unlawfully infringe on Plaintiff’s Marks.





104. Comparing the images in paragraphs 29-34 with the images in paragraphs 102 and 103, it is evident that the Fake Lunatik Products advertised by Seller 6 mimic the design of the authentic TAKTIK® Extreme for iPhone with the Corning® Gorilla® Glass Impact Lens For Screen Protection and bear an exact copy of Lunatik's federally registered design mark. The Fake Products were intended to confuse both the ultimate retail consumer and persons observing the ultimate consumer into believing that it is a genuine Lunatik product.

105. Lunatik makes its TAKTIK® phone cases in two colors: white and black. It has repeatedly made this fact known to eBay, and advised it that TAKTIK® phone cases offered in other colors such as yellow or red are counterfeit goods.

106. Lunatik uses a poly-carbonate plastic material for its TAKTIK® phone perimeters. It does not and has never used Aluminum, and has repeatedly made eBay aware of this fact, and advised it that TAKTIK® phones offered as aluminum are counterfeit.

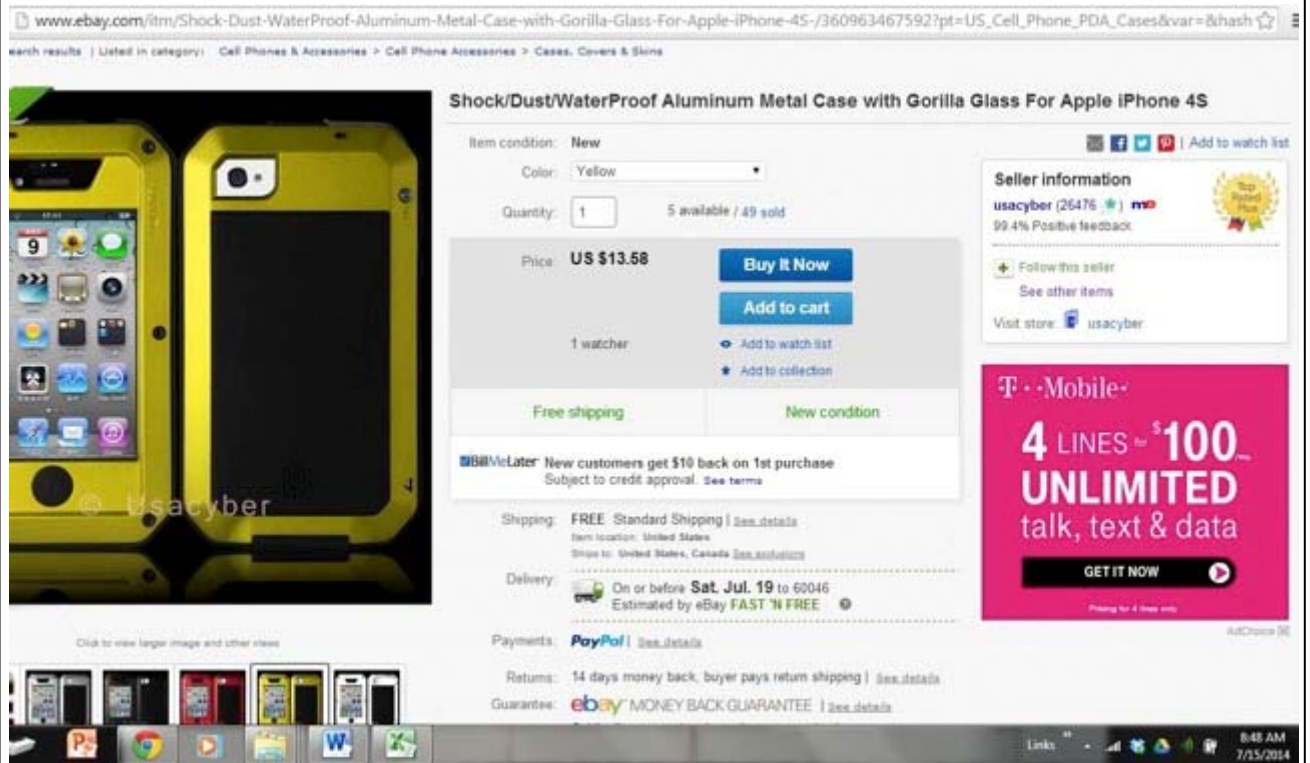
1           107. Given that eBay repeatedly has been informed by Lunatik and The  
2 Counterfeit Report that TAKTIK® phone cases offered as aluminum are counterfeit  
3 and that TAKTIK® phone cases offered in colors such as yellow, silver, gold or red  
4 are counterfeit, eBay knew, or willfully ignored, that, based on the price, material and  
5 color of the iPhone cases advertised in the listings that were the subject of the Seller 6  
6 NOCIs, that the iPhone cases advertised by Seller 6 were Fake Lunatik Products.

7                           **Unauthorized Use of Plaintiff's Marks By Seller 7**

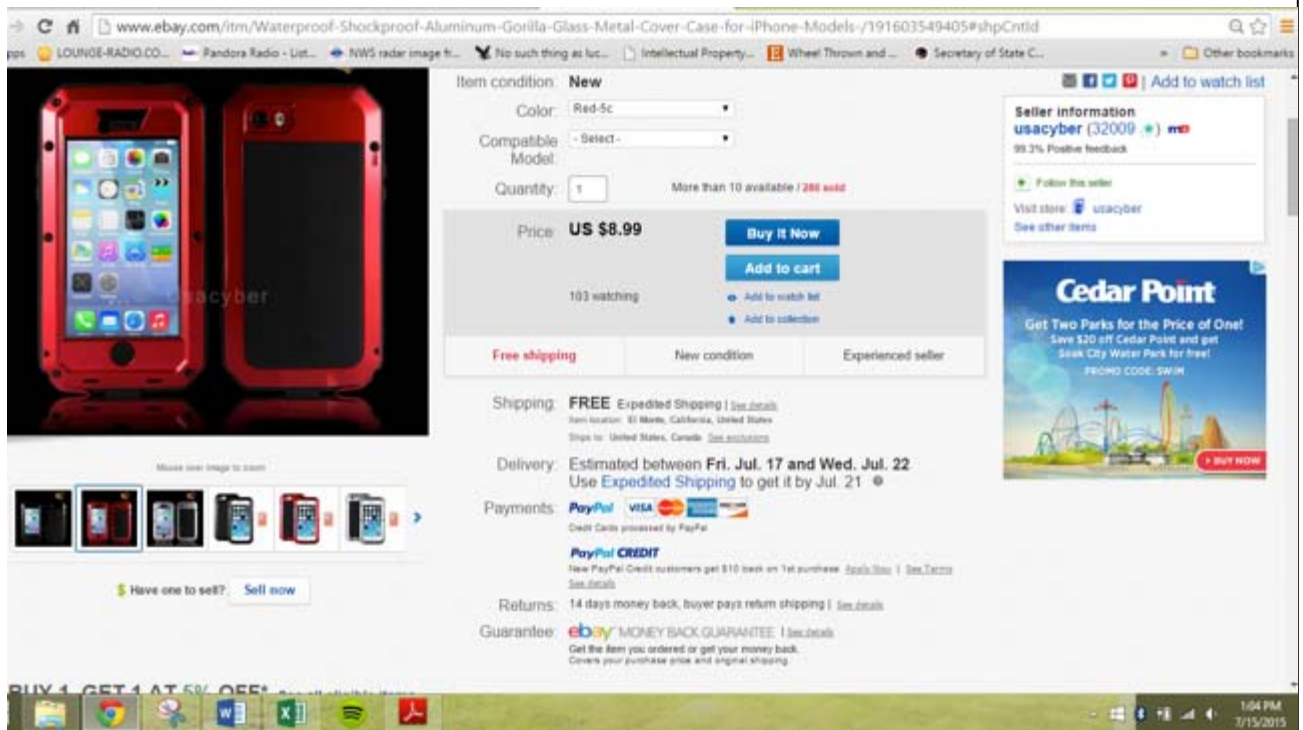
8           108. Seller 7 has had multiple listings on ebay.com which display one or more  
9 counterfeit marks that infringe on Plaintiff's Marks in connection with an offer for the  
10 sale of an obvious Fake Lunatik iPhone case by Seller 7.

11           109. Set forth below is a listing that appeared on ebay.com on or about  
12 July 15, 2014 which displays one or more counterfeit marks that infringe on  
13 Plaintiff's Mark in connection with an offer for the sale of Fake Lunatik iPhone cases  
14 by Seller 7. It was reported on ebay.com that two units of the Fake Lunatik iPhone  
15 case described in Seller 7's listing were sold to the public. The listing advertises a  
16 "Shock/Dust/WaterProof Aluminum Metal Case with Gorilla Glass For Apple  
17 iPhone4s" for \$13.58. The listing offers iPhone cases for other iPhone models in  
18 silver, red and yellow, colors never offered by Lunatik. The listing also reports  
19 payment to PayPal.  
20  
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110. On or about July 15, 2014, Plaintiff transmitted NOCIs to eBay in response to Seller 7 listings on ebay.com offering for sale obvious counterfeit Lunatik iPhone cases ("Seller 7 NOCIs"). As evidenced by the listing below, as of July 15, 2015, eBay continues to allow Seller 7 to list for sale obvious counterfeit iPhone cases on ebay.com that unlawfully infringe on Plaintiff's Marks.



111. Comparing the images in paragraphs 29-34 with the images in paragraphs 109 and 110, it is evident that the Fake Lunatik Products advertised by Seller 7 mimic the design of the authentic TAKTIK® Extreme for iPhone with the Corning® Gorilla® Glass Impact Lens For Screen Protection and bear an exact copy of Lunatik's federally registered design mark. The Fake Products were intended to confuse both the ultimate retail consumer and persons observing the ultimate consumer into believing that it is a genuine Lunatik product.

112. Lunatik makes its TAKTIK® phone cases in two colors: white and black. It has repeatedly made this fact known to eBay, and advised it that TAKTIK® phone cases offered in other colors such as yellow or red are counterfeit goods

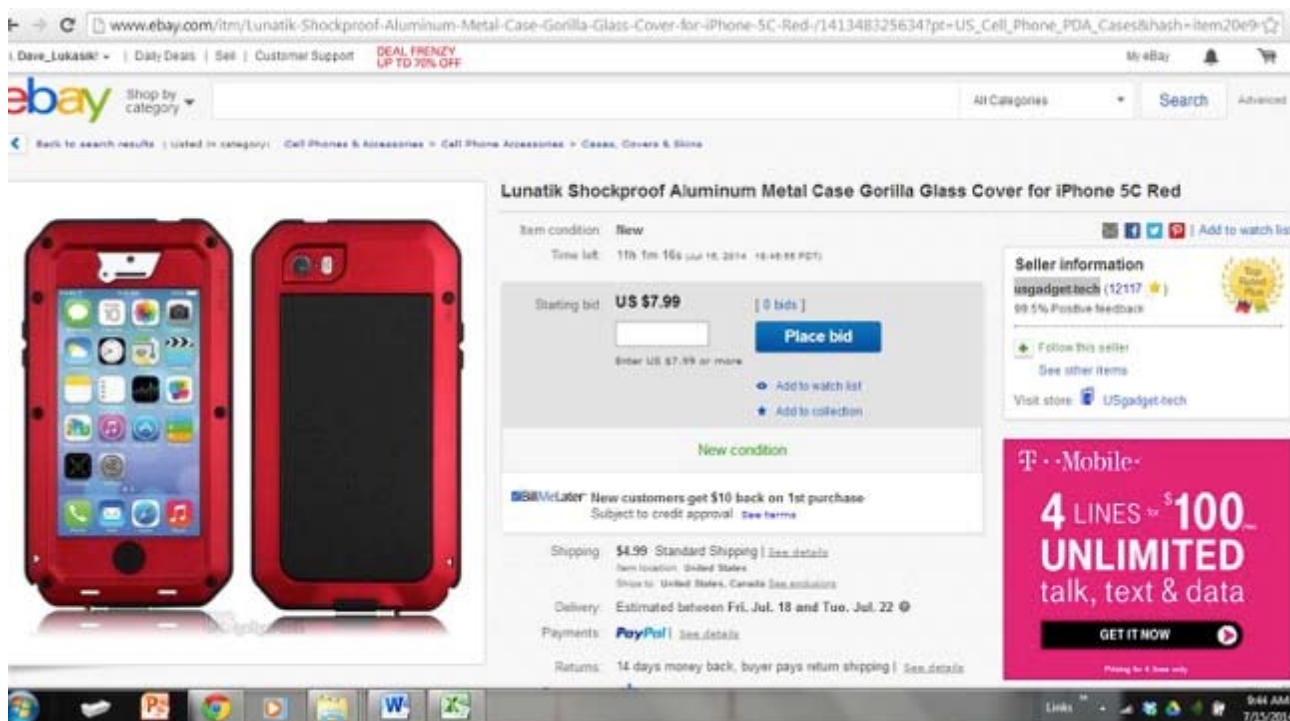
113. Lunatik uses a poly-carbonate plastic material for its TAKTIK® phone perimeters. It does not and has never used Aluminum, and has repeatedly made eBay aware of this fact, and advised it that TAKTIK® phones offered as aluminum are counterfeit.

1        114. Given that eBay repeatedly has been informed by Lunatik and the  
2 Counterfeit Report that TAKTIK® phone cases offered as aluminum are counterfeit  
3 and that TAKTIK® phone cases offered in colors such as yellow, silver, gold or red  
4 are counterfeit, eBay knew, or willfully ignored, that, based on the price, material and  
5 color of the iPhone cases advertised in the listings that were the subject of the Seller 7  
6 NOCIs, that the iPhone cases advertised by Seller 7 were Fake Lunatik Products.

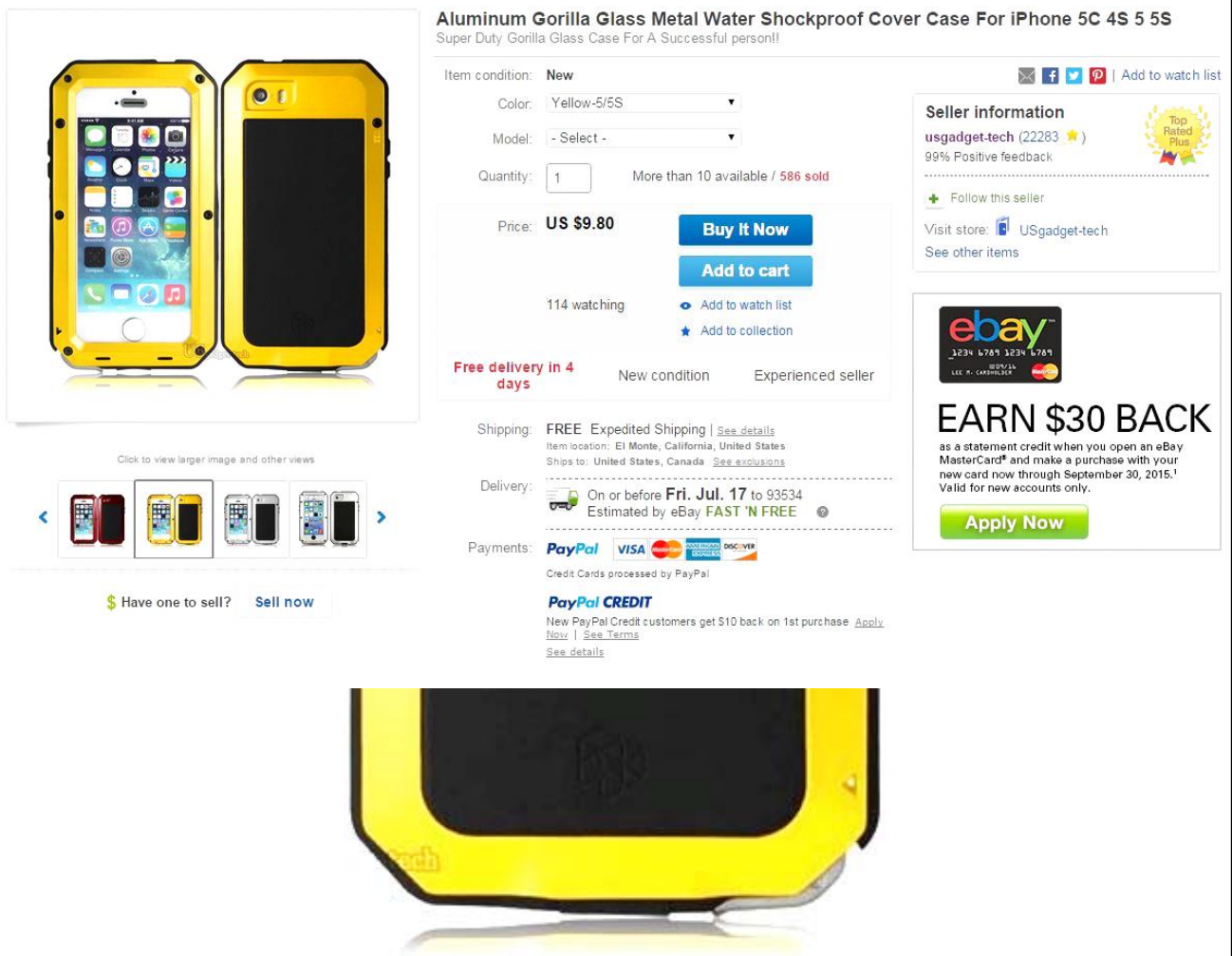
7                    **Unauthorized Use of Plaintiff's Marks By Seller 8**

8        115. Seller 8 has had multiple listings on ebay.com which display one or more  
9 counterfeit marks that infringe on Plaintiff's Marks in connection with an offer for the  
10 sale of an obvious Fake Lunatik iPhone case by Seller 8.

11        116. Set forth below is a listing that appeared on ebay.com on or about  
12 July 15, 2014 which displays one or more counterfeit marks that infringe on  
13 Plaintiff's Mark in connection with an offer for the sale of a Fake Lunatik iPhone case  
14 by Seller 8. The listing advertises a "Lunatik Shockproof Aluminum Metal Case  
15 Gorilla Glass Cover for iPhone 5C Red" for \$7.99. The listing offers iPhone cases for  
16 iPhone models either not manufactured by Plaintiff and/or in colors never offered by  
17 Lunatik. The listing also reports "credit cards are processed by PayPal."



117. On or about July 15, 2014, Plaintiff transmitted NOCIs to eBay in response to Seller 8 listings on ebay.com offering for sale obvious counterfeit Lunatik iPhone cases (“Seller 8 NOCIs”). As evidenced by the listing below, as of July 13, 2015, eBay continues to allow Seller 8 to list for sale obvious counterfeit iPhone cases on ebay.com that unlawfully infringe on Plaintiff’s Marks.



118. Comparing the images in paragraphs 29-34 with the images in paragraphs 116 and 117, it is evident that the Fake Lunatik Products advertised by Seller 8 mimic the design of the authentic TAKTIK® Extreme for iPhone with the Corning® Gorilla® Glass Impact Lens For Screen Protection and bear an exact copy of Lunatik's federally registered design mark. The Fake Products were intended to confuse both the ultimate retail consumer and persons observing the ultimate consumer into believing that it is a genuine Lunatik product.

119. Lunatik makes its TAKTIK® phone cases in two colors: white and black. It has repeatedly made this fact known to eBay, and advised it that TAKTIK® phone cases offered in other colors such as yellow or red are counterfeit goods.



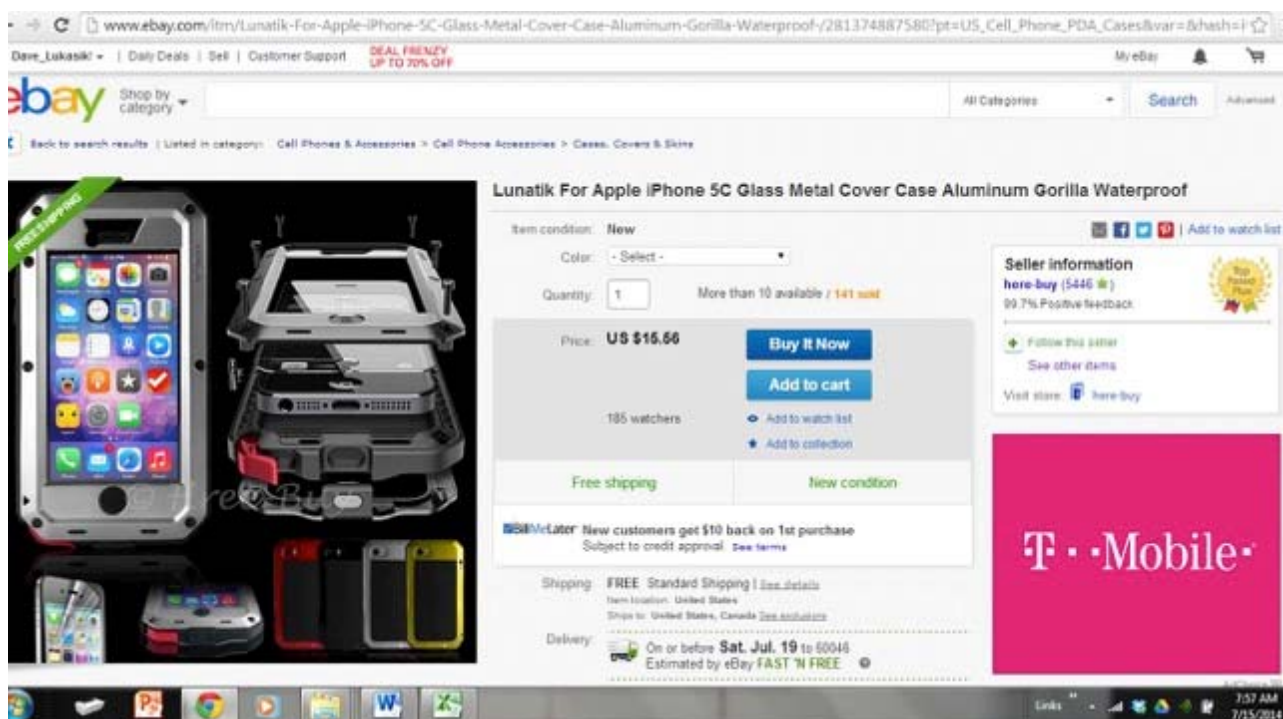
1           120. Lunatik uses a poly-carbonate plastic material for its TAKTIK® phone  
2 perimeters. It does not and has never used Aluminum, and has repeatedly made eBay  
3 aware of this fact, and advised it that TAKTIK® phones offered as aluminum are  
4 counterfeit.

5           121. Given that eBay repeatedly has been informed by Lunatik and The  
6 Counterfeit Report that TAKTIK® phone cases offered as aluminum are counterfeit  
7 and that TAKTIK® phone cases offered in colors such as yellow, silver, gold or red  
8 are counterfeit, eBay knew, or willfully ignored, that, based on the price, material and  
9 color of the iPhone cases advertised in the listings that were the subject of the Seller 8  
10 NOCIs, that the iPhone cases advertised by Seller 6 were Fake Lunatik Products.

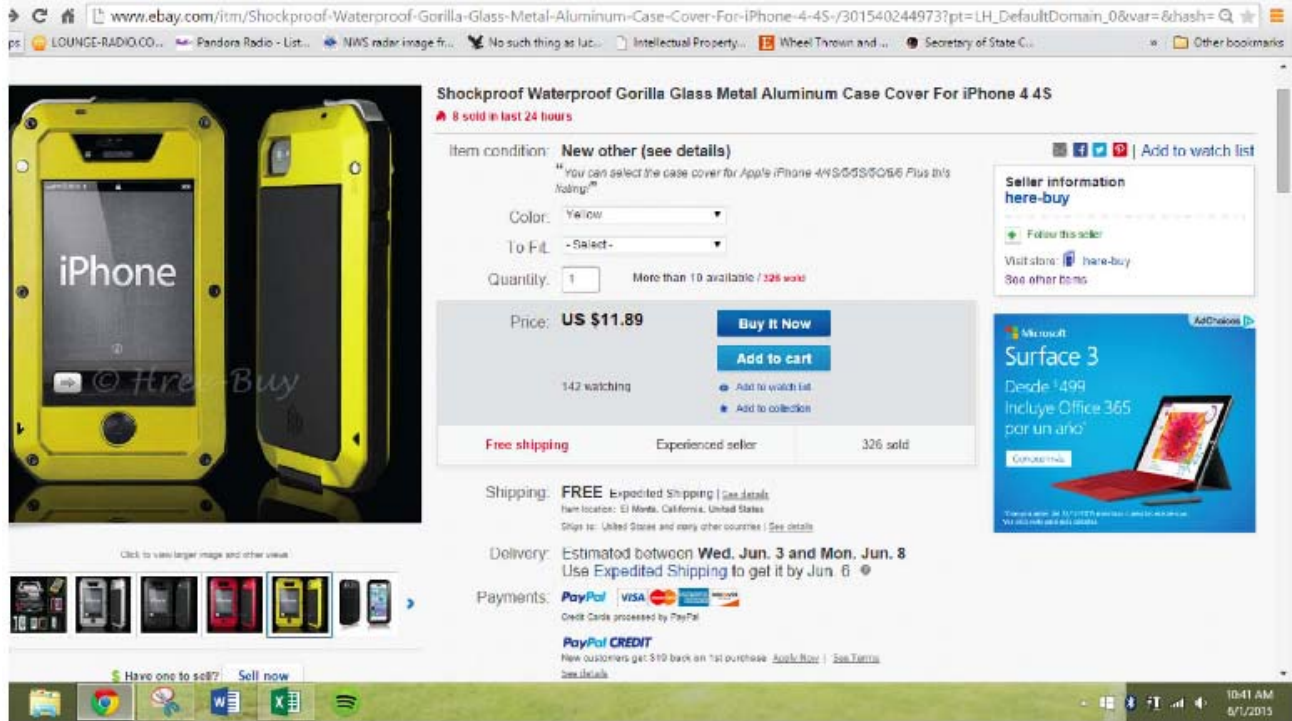
11                           **Unauthorized Use of Plaintiff's Marks By Seller 9**

12           122. Set forth below is a July 2014 listing for the sale of Fake Lunatik iPhone  
13 cases to the public on ebay.com by Defendant Here-Buy, Seller 9. As of July 15,  
14 2014, it was reported on ebay.com that Defendant Here-Buy sold 141 units of the  
15 advertised Fake Lunatik iPhone case based on this listing. The listing advertises  
16 “Lunatik For Apple iPhone 5c Glass Metal Cover Case Aluminum Gorilla  
17 Waterproof” cases for \$15.56 with the LUNATIK design mark in colors never offered  
18 by Lunatik.





123. Set forth below is another listing for the sale of Fake Lunatik iPhone cases to the public on ebay.com by Seller 9. As of June 1, 2015, it was reported on ebay.com that Seller 9 sold 325 units of the advertised Fake Lunatik iPhone case based on this listing. The listing advertises a “Shockproof Waterproof Gorilla Glass Metal Aluminum Case Cover For iPhone 4 4S” for \$11.89 in yellow with the LUNATIK design mark in silver, red, and yellow, colors never offered by Lunatik.



124. Comparing the images in paragraphs 29-34 with the images in paragraphs 122 and 123, it is evident that the Fake Lunatik Products advertised by Seller 9 mimic the design of the authentic TAKTIK® Extreme for iPhone with the Corning® Gorilla® Glass Impact Lens For Screen Protection and bear an exact copy of Lunatik's federally registered design mark. The Fake Products were intended to confuse both the ultimate retail consumer and persons observing the ultimate consumer into believing that it is a genuine Lunatik product.

125. Lunatik makes its TAKTIK® phone cases in two colors: white and black. It has repeatedly made this fact known to eBay, and advised it that TAKTIK® phone cases offered in other colors such as yellow, silver, gold or red are counterfeit goods.

126. Lunatik uses a poly-carbonate plastic material for its TAKTIK® phone perimeters. It does not and has never used Aluminum, and has repeatedly made eBay aware of this fact, and advised it that TAKTIK® phones offered as aluminum are counterfeit.

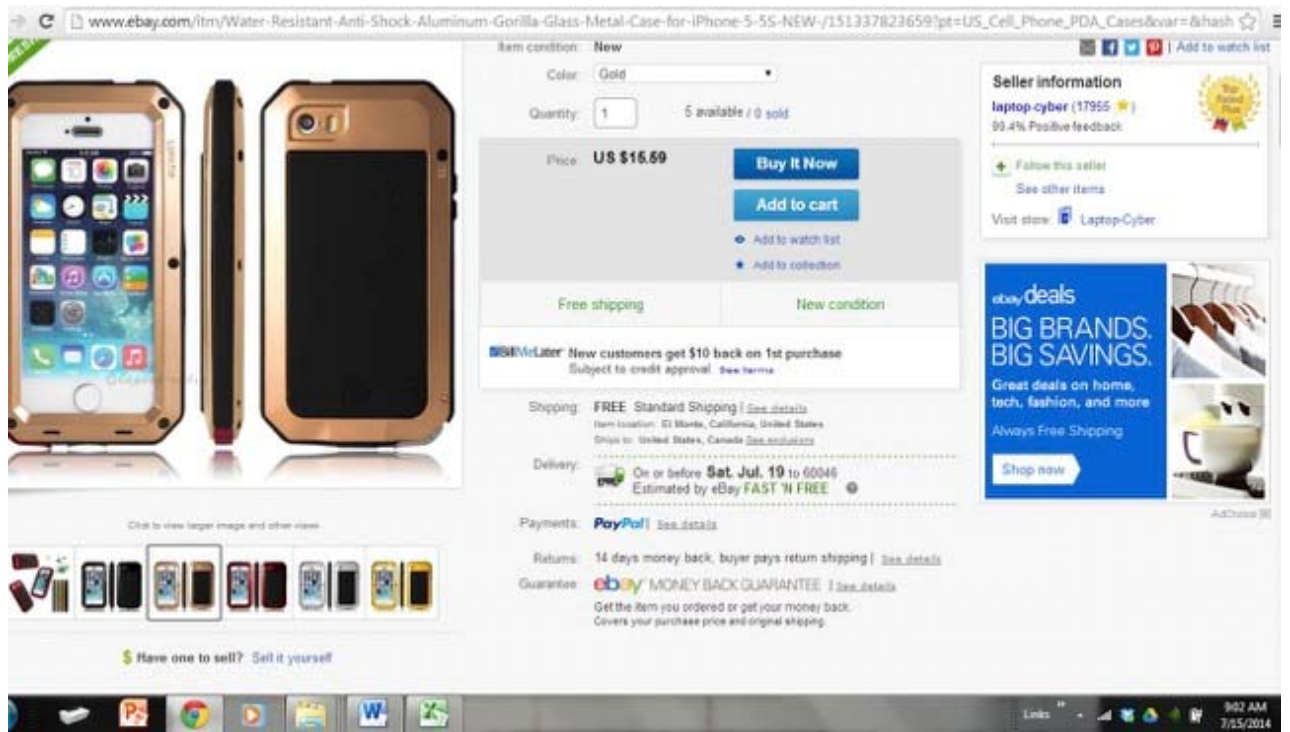
1        127. On July 14, 2014, June 1, 2015, and July 15, 2014 Plaintiff transmitted  
2 NOCIs to eBay in response to listings on ebay.com of Seller 9 for the sale of obvious  
3 counterfeit Lunatik products as described more particularly herein (“Seller 9  
4 NOCIs”).

5        128. Given that eBay repeatedly has been informed by Lunatik and the  
6 Counterfeit Report that TAKTIK® phone cases offered as aluminum are counterfeit  
7 and that TAKTIK® iPhone cases offered in colors such as yellow, silver, gold or red  
8 are counterfeit, eBay knew, or willfully ignored, that, based on the price, material and  
9 color of the iPhone cases advertised in the listings that were the subject of the Seller 9  
10 NOCIs, that the iPhone cases advertised by Seller 9 were Fake Lunatik Products.

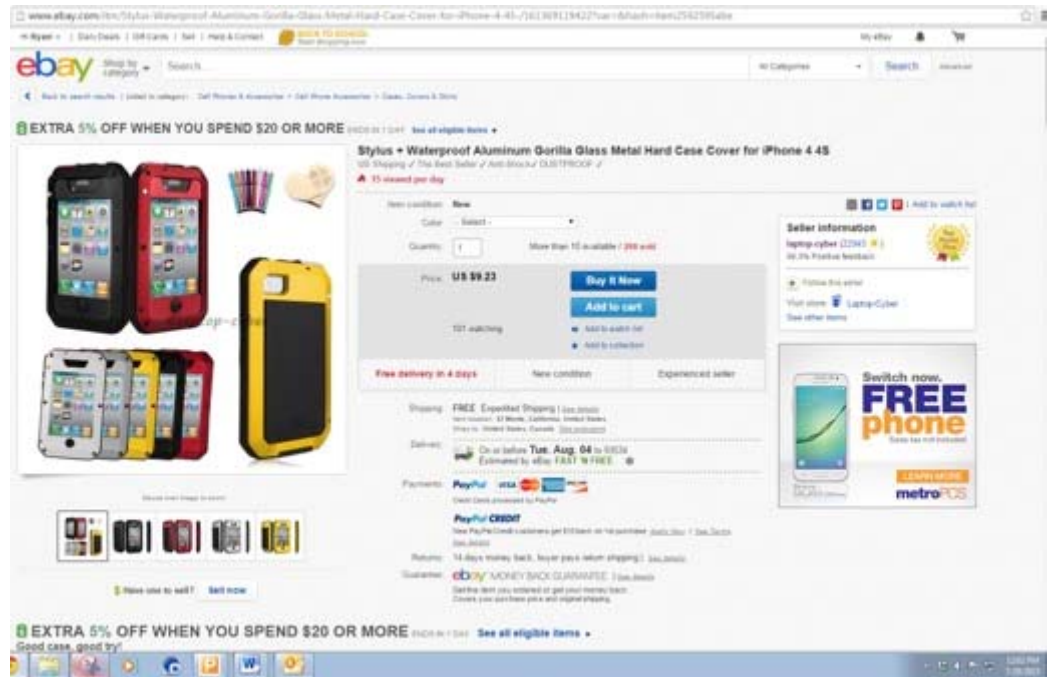
11                    **Unauthorized Use of Plaintiff’s Marks By Seller 10**

12        129. Seller 10 has had multiple listings on ebay.com which display one or  
13 more counterfeit marks that infringe on Plaintiff’s Marks in connection with an offer  
14 for the sale of an obvious Fake Lunatik iPhone case by Seller 10.

15        130. Set forth below is a listing that appeared on ebay.com on or about  
16 July 15, 2014 which displays one or more counterfeit marks that infringe on  
17 Plaintiff’s Mark in connection with an offer for the sale of Fake Lunatik iPhone cases  
18 by Seller 10. The listing advertises a “Water-Resistant-Anti-Shock-Aluminum-  
19 Gorilla-Glass-Metal-Case-for-iPhone-5-5S-NEW” for \$15.59. The listing offers  
20 iPhone cases in gold, silver, red and yellow, colors never offered by Lunatik. The  
21 listing also reports payment through PayPal.



131. On or about July 15, 2014, Plaintiff transmitted NOCIs to eBay in response to Seller 10 listings on ebay.com offering for sale obvious counterfeit Lunatik iPhone cases (“Seller 10 NOCIs”). As evidenced by the listing below, as of July 29, 2015, eBay continues to allow Seller 10 to list for sale obvious counterfeit iPhone cases on ebay.com that unlawfully infringe on Plaintiff’s Marks.



132. Comparing the images in paragraphs 29-34 with the images in paragraphs 130 and 131, it is evident that the Fake Lunatik Products advertised by Seller 6 mimic the design of the authentic TAKTIK® Extreme for iPhone with the Corning® Gorilla® Glass Impact Lens For Screen Protection and bear an exact copy of Lunatik's federally registered design mark. The Fake Products were intended to confuse both the ultimate retail consumer and persons observing the ultimate consumer into believing that it is a genuine Lunatik product.

133. Lunatik makes its TAKTIK® phone cases in two colors: white and black. It has repeatedly made this fact known to eBay, and advised it that TAKTIK® phone cases offered in other colors such as yellow or red are counterfeit goods.



1        134. Lunatik uses a poly-carbonate plastic material for its TAKTIK® phone  
2 perimeters. It does not and has never used Aluminum, and has repeatedly made eBay  
3 aware of this fact, and advised it that TAKTIK® phones offered as aluminum are  
4 counterfeit.

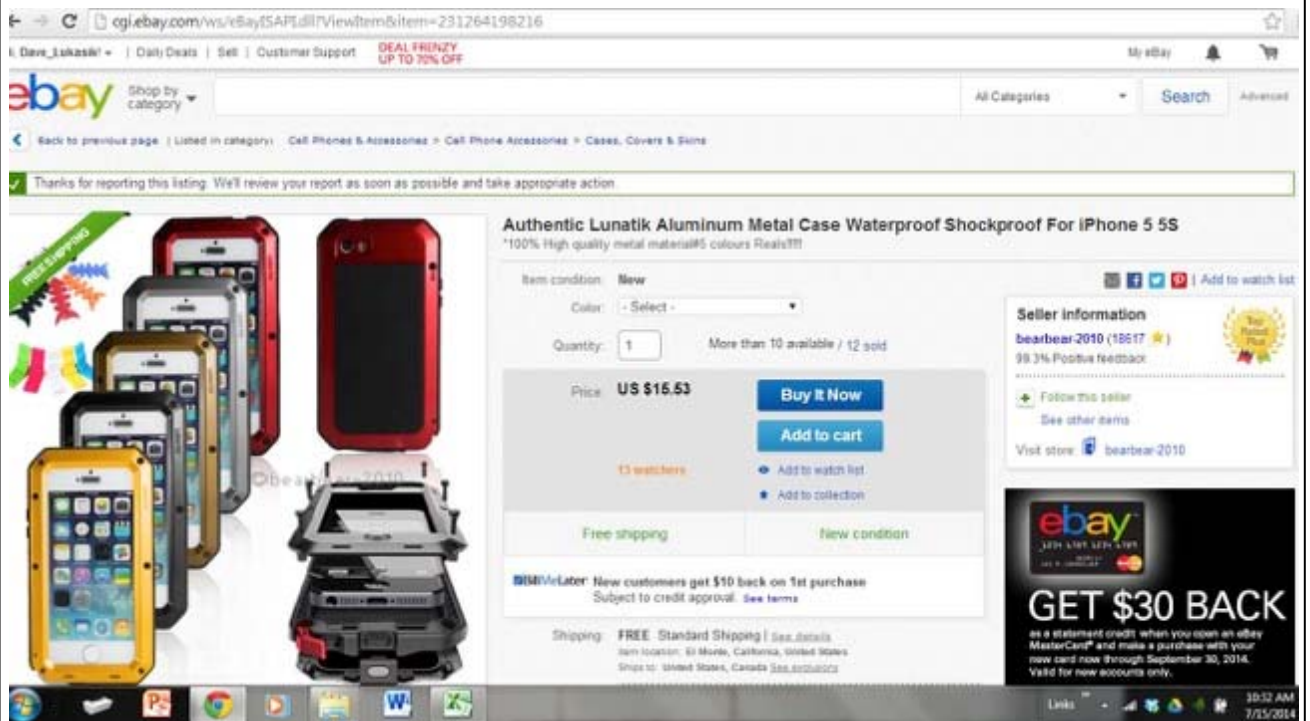
5        135. Given that eBay repeatedly has been informed by Lunatik and The  
6 Counterfeit Report that TAKTIK® phone cases offered as aluminum are counterfeit  
7 and that TAKTIK® phone cases offered in colors such as yellow, silver, gold or red  
8 are counterfeit, eBay knew, or willfully ignored, that, based on the price, material and  
9 color of the iPhone cases advertised in the listings that were the subject of the Seller  
10 10 NOCIs, that the iPhone cases advertised by Seller 10 were Fake Lunatik Products

11                    **Unauthorized Use of Plaintiff's Marks By Seller 11**

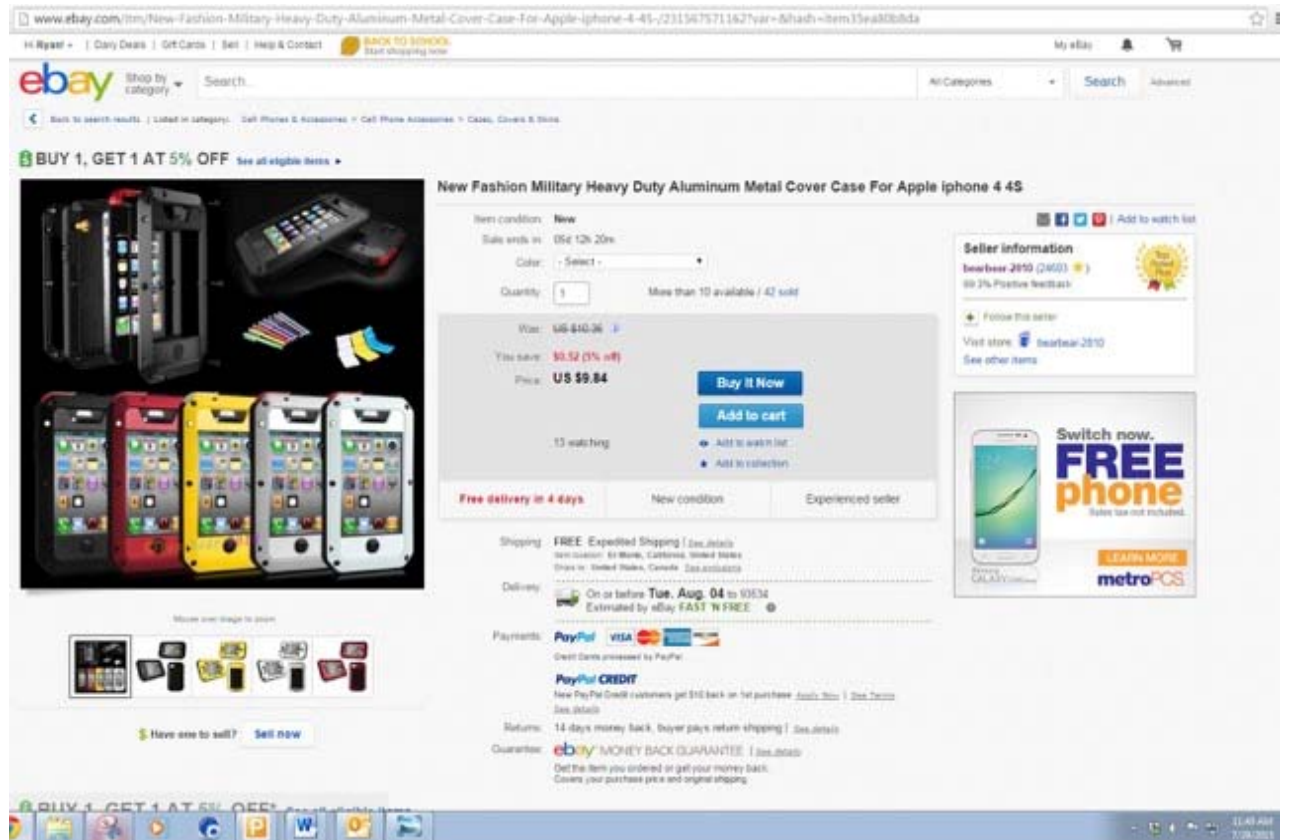
12        136. Seller 11 has had multiple listings on ebay.com which display one or  
13 more counterfeit marks that infringe on Plaintiff's Marks in connection with an offer  
14 for the sale of an obvious Fake Lunatik iPhone case by Seller 11.

15        137. Set forth below is a listing that appeared on ebay.com on or about July  
16 15, 2014 which displays one or more counterfeit marks that infringe on Plaintiff's  
17 Mark in connection with an offer for the sale of Fake Lunatik iPhone cases by  
18 Seller 11. It was reported on ebay.com that 12 units of the Fake Lunatik iPhone case  
19 described in Seller 6's listing were sold to the public. The listing advertises an  
20 "Authentic Lunatik Aluminum Metal Case Waterproof Shockproof For iPhone 5 5S  
21 100% High quality metal material #5 colours Reals!!!!" for \$15.53. The listing offers  
22 iPhone cases for other iPhone models either not manufactured by Plaintiff and/or in  
23 colors never offered by Lunatik.





138. On or about July 15, 2014, Plaintiff transmitted NOCIs to eBay in response to Seller 11 listings on ebay.com offering for sale obvious counterfeit Lunatik iPhone cases (“Seller 11 NOCIs”). As evidenced by the listing below, as of July 29, 2015, eBay continues to allow Seller 11 to list for sale obvious counterfeit iPhone cases on ebay.com that unlawfully infringe on Plaintiff’s Marks.



139. Comparing the images in paragraphs 29-34 with the images in paragraphs 137 and 138, it is evident that the Fake Lunatik Products advertised by Seller 11 mimic the design of the authentic TAKTIK®® Extreme for iPhone with the Corning® Gorilla® Glass Impact Lens For Screen Protection and bear an exact copy of Lunatik's federally registered design mark. The Fake Products were intended to confuse both the ultimate retail consumer and persons observing the ultimate consumer into believing that it is a genuine Lunatik product.

1        140. Lunatik makes its TAKTIK® phone cases in two colors: white and  
2 black. It has repeatedly made this fact known to eBay, and advised it that TAKTIK®  
3 phone cases offered in other colors such as yellow or red are counterfeit goods.

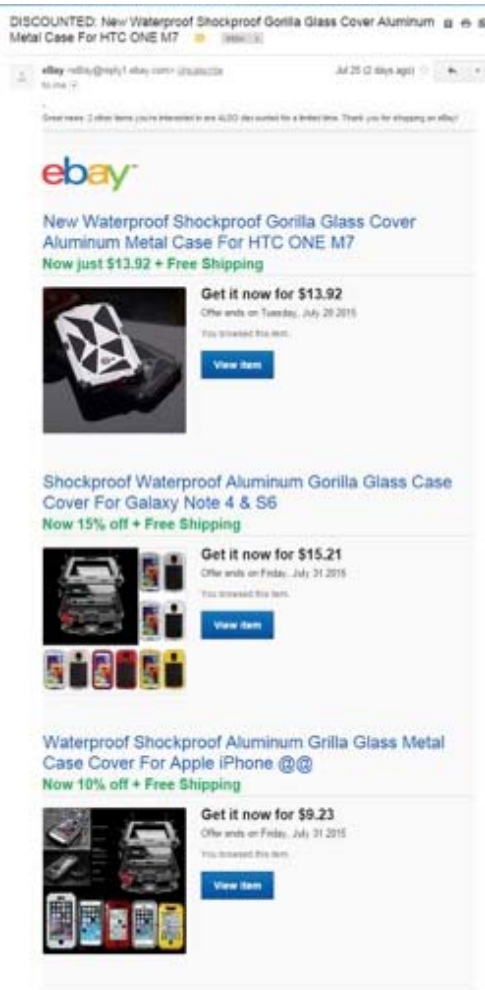
4        141. Lunatik uses a poly-carbonate plastic material for its TAKTIK® phone  
5 perimeters. It does not and has never used Aluminum, and has repeatedly made eBay  
6 aware of this fact, and advised it that TAKTIK® phones offered as aluminum are  
7 counterfeit.

8        142. Given that eBay repeatedly has been informed by Lunatik and The  
9 Counterfeit Report that TAKTIK® phone cases offered as aluminum are counterfeit  
10 and that TAKTIK® phone cases offered in colors such as yellow, silver, gold or red  
11 are counterfeit, eBay knew, or willfully ignored, that, based on the price, material and  
12 color of the iPhone cases advertised in the listings that were the subject of the  
13 Seller 11 NOCIs, that the iPhone cases advertised by Seller 11 were Fake Lunatik  
14 Products.

15                    **Unauthorized Use of Plaintiff's Marks By eBay**

16        143. Plaintiff is informed and believes that eBay on a regular and continuous  
17 basis promotes the sale of obvious counterfeit Lunatik Products that infringe on  
18 Plaintiff's Marks by Unauthorized Sellers by, among other things, the transmittal of  
19 automated emails to eBay buyers who have "browsed" similar items.

20        144. For example, set forth below is an email transmitted to an eBay buyer on  
21 July 25, 2015, offering to sell counterfeit Lunatik iPhone cases described as  
22 "Waterproof Shockproof Aluminum Grilla [sic] Glass Metal Case Cover for Apple  
23 iPhone @@" for \$9.23.



145. In response to eBay's email solicitation, the aforementioned eBay buyer purchased four cases from Seller 2 in black, red, yellow, and silver in iPhone sizes 4, 4S, 5, and 6, respectively. The images below depict the Fake Lunatik Products sent to that eBay buyer. None of the Fake Lunatik Products sent to the buyer had any of Plaintiff's Marks as advertised by eBay's email.



146. Comparing the images in paragraphs 29-34 with the images in paragraphs 144 and 145, it is evident that the Fake Lunatik Products advertised by eBay mimic the design of the authentic TAKTIK® Extreme for iPhone with the Corning® Gorilla® Glass Impact Lens For Screen Protection and bear an exact copy of Lunatik's federally registered design mark. The Fake Products were intended to confuse both the ultimate retail consumer and persons observing the ultimate consumer into believing that it is a genuine Lunatik product.

147. Lunatik makes its TAKTIK® phone cases in two colors: white and black. It has repeatedly made this fact known to eBay, and advised it that TAKTIK® phone cases offered in other colors such as yellow or red are counterfeit goods.

148. Lunatik uses a poly-carbonate plastic material for its TAKTIK® phone perimeters. It does not and has never used Aluminum, and has repeatedly made eBay



1 aware of this fact, and advised it that TAKTIK® phones offered as aluminum are  
2 counterfeit.

3 149. Given that eBay repeatedly has been informed by Lunatik and The  
4 Counterfeit Report that TAKTIK® phone cases offered as aluminum are counterfeit  
5 and that TAKTIK® phone cases offered in colors such as yellow, silver, gold or red  
6 are counterfeit, eBay knew, or willfully ignored, that, based on the price, material and  
7 color of the iPhone cases advertised in its July 25, 2014 email were Fake Lunatik  
8 Products.

9 **The Counterfeit Report Confirms Unauthorized Use of Plaintiff's Marks by**  
10 **eBay Sellers and Knowing Contribution by eBay.**

11 150. During the period November  
12 2014 through June 2014, The Counterfeit  
13 Report responded to infringing listings on  
14 ebay.com offered by seventy-three eBay  
15 sellers and received from those sellers,  
16 including at least Seller Defendants 1, 2, 3,  
17 5, and 9, 121 Fake Lunatik Cases.



18 Seventy-one of the 121 Fake Lunatik Cases bore Lunatik Marks on the product and/or  
19 packaging. These Fake Lunatik Cases were received from fifty-one eBay sellers. The  
20 remaining fifty cases shipped by twenty-two eBay sellers to The Counterfeit Report  
21 were identified in eBay listings showing the Lunatik word mark or logo mark, but no  
22 Lunatik Mark was on the product shipped to The Counterfeit Report.

23 151. The Counterfeit Report performed a similar study with Lunatik products  
24 on [www.amazon.com](http://www.amazon.com), and brought the results to Amazon's attention. Specifically,  
25 The Counterfeit Report identified to Amazon that Lunatik does not sell TAKTIK®  
26 brand phone cases in colors other than white and black, and does not make them using  
27 aluminum. Using this information, Amazon was able to clear away nearly 7,000  
28



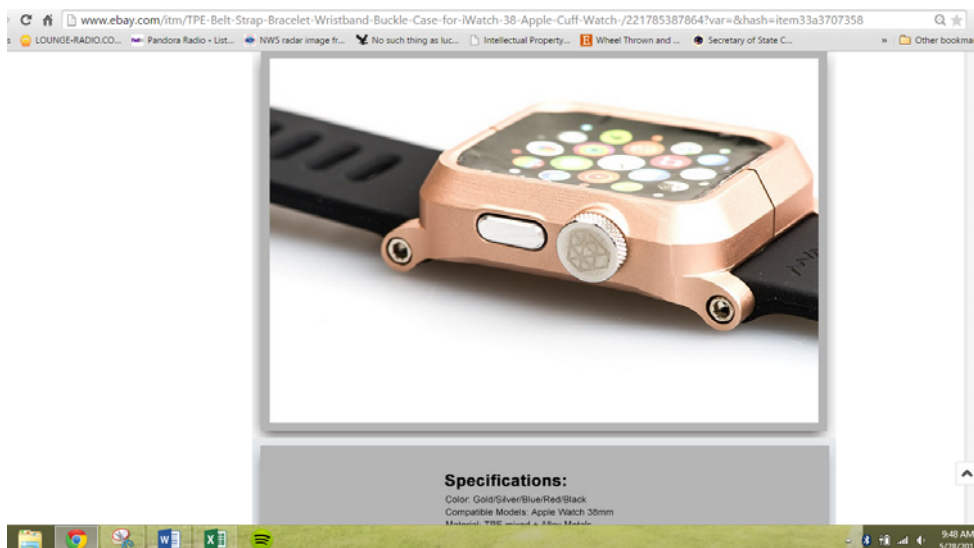
1 counterfeit listings in a single day using a simply search algorithm to identify and  
2 remove TAKTIK® brand cases of the wrong color or material.

3 152. Not only has eBay refused to take such a proactive and simple step, it  
4 uses similar algorithms to help consumers find these off-color and wrong-material  
5 Fake Lunatik Products. For example, a user can go on to ebay.com, search “lunatik  
6 taktik” and select “yellow” or “red” and will either be directed by eBay to such  
7 counterfeit products or receive an alert from eBay when an Unauthorized Seller offers  
8 such a counterfeit product.

9 153. Thus, on information and belief, eBay has the same search and isolation  
10 capability as Amazon, but has used it to profit from infringing sales rather than to  
11 remove them.

### 12 **Unauthorized Use of Plaintiff’s Marks In Connection with Listings for** 13 **LUNATIK® EPIK.**

14 154. Set forth below is a listing dated May 28, 2015 for the sale of a Fake  
15 Lunatik iWatch case to the public on ebay.com by a seller listed on ebay.com. The  
16 listing advertises a “Luxury Full Metal Aluminum Wrist watch bands Strap Case for  
17 Apple Watch iWatch” for \$36.89 with the LUNATIK logo mark on the power button.  
18 The listings also report that “credit cards [are] processed by PayPal” and that buyers



can apply and use  
purchase ”PayPal  
Credit.” Buyers  
applying for  
PaylPal Credit  
are eligible to  
receive \$10 back  
on their first  
purchase.

1        155. On May 15, 2015, Plaintiff transmitted a NOCI to vero@eBay.com in  
2 response to the listing described in paragraph 154 above. In the NOCI, Plaintiff  
3 informed eBay “[s]eller has [Plaintiff’s] registered trademark on the watch power  
4 button. [Plaintiff] just launched this watch case [on May 15, 2015] at Apple stores  
5 only.” eBay effectively ignored Plaintiff’s NOCI. Fifteen minutes after Plaintiff’s  
6 NOCI was sent, [vero@ebay.com](mailto:vero@ebay.com) responded as follows: “If you feel that these listings  
7 do infringe on your intellectual property rights, please respond to this message and  
8 provide us with a more detailed explanation.” Since May 15, 2015, multiple listings  
9 have appeared to ebay.com for the sale of Fake Lunatik iWatch cases by  
10 Unauthorized Sellers.

11        156. Comparing the image in paragraph 36 with the image in paragraph 154,  
12 it is evident that the Fake Lunatik Products advertised on ebay.com mimic the design  
13 of the authentic LUNATIK® EPIK and bear an exact copy of Lunatik’s federally  
14 registered design mark. The Fake Products were intended to confuse both the  
15 ultimate retail consumer and persons observing the ultimate consumer into believing  
16 that it is a genuine Lunatik product.

17        **G. PayPal’s Processing of Counterfeit Sales Through ebay.com**

18        157. eBay sold the Fake Lunatik Products through its online retail  
19 marketplaces with the payment processing services of its wholly-owned subsidiary,  
20 PayPal. In 2014, PayPal moved \$228 billion in 26 currencies across more than 190  
21 nations, generating a total revenue of \$7.9 billion (44% of eBay’s total profits). The  
22 same year, eBay announced plans to spin-off PayPal into an independent company the  
23 following year.<sup>xxx</sup>

24        158. eBay reports that “PayPal connects with financial institutions around the  
25 world, and allows consumers to make purchases using a broad range of payment  
26 methods, regardless of where a seller is located. Users of our PayPal payments  
27  
28

1 solutions can engage in cross-border shopping, which can help merchants to increase  
2 sales volume by allowing them to sell to a global base of consumers, who can make  
3 payments in a wide range of currencies.”<sup>xxxix</sup>

4 159. eBay reports that the Company “had 162 million active registered  
5 accounts as of December 31, 2014.” The term “active registered accounts” means, as  
6 of a given date, all registered accounts that successfully sent or received at least one  
7 payment or payment reversal through PayPal payments networks, including PayPal  
8 Credit, within the last 12 months and which are currently able to transact. Users may  
9 have more than one account with PayPal or PayPal Credit and therefore the number of  
10 active registered accounts may be greater than the number of underlying users.”<sup>xxxix</sup>

11 160. “PayPal started as a payment solution for online transactions between  
12 consumers and merchants through a traditional online experience (i.e., an Internet-  
13 connected computer). As a result of being simple and secure for consumers, PayPal  
14 can help merchants to increase conversion of online traffic to sales. An online  
15 merchant can typically open a standard PayPal account and begin accepting payments  
16 through PayPal within a few minutes. Most online or mobile merchants are approved  
17 instantly. Processing online with PayPal does not require a merchant to invest in new  
18 or specialized hardware. PayPal's technology platform supports growth with a variety  
19 of value-added services. This is designed to help businesses of all sizes manage their  
20 cash flow, invoice clients and pay bills, and to reduce the need for merchants to  
21 receive and store sensitive customer financial information, enabling Payment Card  
22 Industry, or PCI, compliant transactions. PayPal does not charge merchants any setup  
23 fees and offers a standard service with no recurring monthly fees.”<sup>xxxix</sup>

24 161. PayPal facilitates transactions on ebay.com through its payment  
25 processing services, which “enable payments in the online and physical worlds” and  
26 “offer consumers choice by providing a variety of funding mechanisms.”  
27 “Consumers can typically fund their PayPal accounts in a variety of ways, including  
28

1 by credit card, debit card, electronic funds transfers from their bank account and  
2 through a PayPal account balance if the consumer has previously received payments  
3 through PayPal or chosen to pre-fund their PayPal account.” eBay refers to the  
4 allocation of funding sources used by PayPal consumers as its “funding mix.”<sup>xxxiv</sup>

5 162. eBay also provides “credit products through [its] PayPal Credit service.  
6 Currently, when a consumer funds a purchase using PayPal Credit, a chartered  
7 financial institution extends credit to the consumer, funds the extension of credit at  
8 the point of sale and advances funds to the merchant. PayPal Credit is neither a  
9 chartered financial institution nor is it licensed to make loans in any state.  
10 Accordingly, PayPal Credit must rely on a bank or other licensed lender to issue  
11 credit products and extend credit to customers. Although the chartered financial  
12 institution continues to own each of the customer accounts, [eBay] subsequently  
13 purchase[s] and retain[s] most of the consumer receivables related to the consumer  
14 loans made by the chartered financial institution and [is] also responsible for servicing  
15 functions related to the customer account.”<sup>xxxv</sup>

16 163. “PayPal has obtained licenses to operate as a money transmitter (or its  
17 equivalent) in the United States, in the states where it is required, and the District of  
18 Columbia, the U.S. Virgin Islands and Puerto Rico. PayPal’s subsidiary, Venmo, is  
19 also licensed as a money transmitter in certain U.S. states.”<sup>xxxvi</sup>

20 164. “PayPal is subject to various anti-money laundering and counter-terrorist  
21 financing laws and regulations around the world that prohibit, among other things, its  
22 involvement in transferring the proceeds of criminal activities. PayPal has programs  
23 designed to comply with new and existing legal and regulatory requirements.”<sup>xxxvii</sup>

24 165. eBay publicly acknowledges that “PayPal’s payment system is  
25 susceptible to potentially illegal or improper uses, including . . . piracy of software,  
26 movies, music, and other copyrighted or trademarked goods . . . and encouraging,  
27 promoting, facilitating or instructing others to engage in illegal activities.” eBay

1 further reports that “[t]here has been an increased focus by intellectual property rights  
2 owners and government officials on the role that payments systems play in the sale of,  
3 and payment for, pirated digital goods on the Internet, primarily through file sharing  
4 services. Changes in law have increased the penalties for intermediaries providing  
5 payment services for certain illegal activities and additional payments-related  
6 proposals are under active consideration by government authorities. Intellectual  
7 property rights owners may seek to bring legal action against payment companies  
8 such as PayPal and other entities that are peripherally involved in the sale of  
9 infringing items. Rights owners have also increasingly gone into U.S. courts and  
10 obtained injunctions requiring PayPal to cease handling transactions for named  
11 websites and third parties (in most cases located outside the United States) and to hold  
12 the funds of such parties pending judicial resolution of the rights owners’ claims,  
13 which disrupts the relationship between PayPal and such parties.”<sup>xxxviii</sup>

14 166. PayPal is subject to regulation as a money transmitter by the Financial  
15 Crimes Enforcement Network (“FinCEN”).<sup>xxxix</sup> “Money transmitters must make  
16 extensive reporting to FinCEN concerning the personal information of their customers  
17 as well as transactional data, sometimes outright deny service to certain customers,  
18 and even continue servicing customers while permitting government agencies to  
19 monitor each of the transactions. Suspicious transactions – or even transactions in  
20 due course over a certain dollar amount – must be reported to FinCEN. In effect, the  
21 Bank Secrecy Act deputizes financial institutions, requiring them to act as the  
22 government’s foot soldiers in its war on money laundering and illicit finance. In the  
23 cases of international or otherwise ‘high risk’ clients, the business must take even  
24 more stringent identification measures.”<sup>xl</sup>

25 167. As a regulated entity, PayPal has an affirmative obligation to perform the  
26 appropriate level of diligence on its merchants that would entail determining whether  
27 a merchant is selling counterfeit or other illegal goods.<sup>xli</sup>

1           168. eBay, through PayPal, can exercise control over the means of any eBay's  
2 seller's infringement and the offer and sale of Fake Products on ebay.com by adopting  
3 "Best Practices for Voluntary Measures in Addressing the Sale of Counterfeits on the  
4 Internet by Payment Service Providers ("PSPs") promulgated by the International  
5 Trademark Association. Best Practices include, but are not limited to, the following:  
6 (i) PSPs should have policies in place prohibiting the use of their services for the  
7 purchase and sale of goods that are determined to be counterfeit under applicable law;  
8 (ii) PSPs should have procedures for trademark owners to report websites that use a  
9 PSP's network to process payments for the unlawful sales; and (iii) if a PSP observes  
10 repeated violations of the PSP's policies and applicable trademark laws through the  
11 use of its payment service, PSPs may choose to impose appropriate remedies in  
12 accordance with their own internal procedures, including, for example, termination of  
13 service.

14           169. As a result of, *inter alia*, PayPal's extensive knowledge of its online sales  
15 transactions, buyer feedback and the diligence PayPal is required to perform on its  
16 merchants, PayPal and eBay have actual knowledge that they are providing payment  
17 processing services to merchants selling iPhone cases that infringe on Plaintiff's  
18 Marks. In addition, through PayPal, eBay can exercise control over the means of any  
19 eBay seller's infringement and based on that control could impose appropriate  
20 remedies in accordance with their own internal procedures, including, termination of  
21 service. Plaintiff is informed and believes that the most successful avenue for  
22 shutting down the Unauthorized Sellers and other counterfeiters who display products  
23 in listings on ebay.com that infringe on one or more of Plaintiff's Marks, is to cut off  
24 its flow of funding to such sellers, working with credit card companies and banks.

25           170. EBay and PayPal refuse to take such reasonable remedial action and  
26 instead promote the unlawful activities of the Unauthorized Sellers, as described more  
27 particularly hereinafter, and/or manufacture the false optic that they have no  
28



1 knowledge or reason to suspect that users of its services are infringing on Plaintiff's  
2 protected marks.

3 **H. eBay Is an Indispensable Part of the Enterprise that Sells Obvious**  
4 **Counterfeit Products that Infringe on Plaintiff's Trademarks,**  
5 **Resulting in Consumer Confusion and Harm to Plaintiff**

6 171. The Seller Defendants could not have sold Fake Lunatik Products  
7 through ebay.com but for eBay's operation of ebay.com as well as eBay's role  
8 connecting online consumers to online merchants selling obvious counterfeit products  
9 that infringe on Plaintiff's Marks.

10 172. eBay has provided and continues to provide essential services to its  
11 online sellers who display listings with counterfeit Lunatik Products that infringe on  
12 Plaintiff's Marks.

13 173. eBay offers "Market Data Services" to sellers of Fake Products to direct  
14 consumers to, among other things, Fake Lunatik Products offered. As advertised on  
15 ebay.com "[t]he eBay Market Data Program offers rich consumer insight data about  
16 what is purchased on eBay and who is purchasing it. Access to this business  
17 intelligence can help [sellers] make effective buying and selling decisions for [their]  
18 business, regardless of whether you do business on eBay or outside of the eBay  
19 Marketplace."<sup>xlii</sup>

20 174. eBay has been an indispensable participant in the sale of the Seller  
21 Defendants' Fake Lunatik Products. eBay provided ebay.com for sales of Fake  
22 Lunatik Products and facilitated the financing and commercial operations of the  
23 merchants selling Fake Lunatik Products by providing marketing and key word and  
24 search engine optimization services that direct buyers to Fake Lunatik Products and  
25 by facilitating the processing of online payment transactions for the Fake Lunatik  
26 Products through its wholly-owned subsidiary, PayPal. eBay's Enterprise segment  
27 includes its Magento business and provides commerce technologies, omnichannel

1 operations and marketing solutions for merchants of all sizes that operate in general  
2 merchandise categories, including, but not limited to, categories that include products  
3 that infringe on Plaintiff's trademarks.

4 175. In addition, and demonstrated herein, eBay actively promotes the illegal  
5 activity of its Unauthorized Sellers by, among other things, soliciting buyers to  
6 purchase Fake Lunatik Products using advertising that eBay has been informed by at  
7 least Plaintiff and the Counterfeit Report that unlawfully infringes on Plaintiff's  
8 Marks.

9 176. eBay knew or should have known that it was facilitating the sale of  
10 Lunatik Fake Products by the Seller Defendants and more than 2,000 other sellers  
11 who are registered and approved as sellers on ebay.com.

12 177. eBay has derived substantial profits from the sale of Fake Products,  
13 including the sale of Fake Products that infringe on Plaintiff's trademarks on  
14 ebay.com, including, but not limited to, revenue derived from each payment  
15 transaction for which it provides processing services, through its wholly-owned  
16 subsidiary, PayPal.

17 **I. eBay's Unwillingness to Refrain from Trademark Infringement**

18 178. Readily identifiable infringements, listings that display Fake Lunatik  
19 Products, are easily found on ebay.com using eBay's own search engine and email  
20 notification system. As Plaintiff has informed eBay, these products, such as red and  
21 yellow TAKTIK® brand phone cases, or EPIK brand watch cases, have never been  
22 (or at least have not yet been) offered in the Lunatik product line.

23 179. Under the heading "What are we doing to prevent counterfeit listings?"  
24 eBay states on ebay.com that it is "constantly working to make its site safer by doing  
25 the following: (i) proactively removing suspicious items; (ii) removing items reported  
26 as counterfeit by brand owners; (iii) working closely with law enforcement to  
27 prosecute offenders; (iv) providing free tools for rights owners to efficiently identify

1 and report items to us for immediate removal; and (v) partnering with brand owners  
2 and industry initiatives to bring attention to and combat the issue worldwide.” eBay’s  
3 statements about what it is doing to prevent counterfeit listings are materially false  
4 and misleading.<sup>xliii</sup>

5 180. For example, Lunatik has sent eBay more than 5,557 NOCIs since  
6 February 2013, broken down by product and location of product. So that Lunatik can  
7 take prophylactic and other action against, *inter alia*, Unauthorized Sellers continuing  
8 trademark infringements, the Lunatik NOCIs request eBay’s “cooperation in  
9 identifying to Lunatik [eBay’s] source for the infringing products.” Notwithstanding  
10 Plaintiff’s repeated NOCI to eBay frequently identifying the same eBay sellers as  
11 engaged in the offer and sale of Fake Lunatik Products on ebay.com, eBay has not  
12 proactively removed obvious Fake Lunatik Products from eBay.com notwithstanding  
13 that infringing products offered by the Unauthorized Sellers are easily found on  
14 ebay.com using ebay’s own search engine and notification system. Instead, it requires  
15 Lunatik to search for and isolate infringing sales and identify them specifically each  
16 time, despite the fact that eBay is well aware that recidivist Unauthorized Sellers  
17 continue to use ebay.com to list obvious counterfeit Lunatik products that infringe on  
18 Plaintiff’s Marks.

19 181. That eBay’s statements about what it is doing to prevent counterfeit  
20 listings are false and misleading is also evidenced by the results of an investigation  
21 conducted by an independent third party. Commencing in or about March 2013, The  
22 Counterfeit Report conducted an investigation of over 250 counterfeit products that  
23 were purchased from eBay sellers and promptly attempted to report the results of its  
24 investigation to eBay. eBay’s negative response to this third party initiative cannot be  
25 reconciled with its promise to constantly work to make its site safer for legitimate  
26 brand owners. [According to] The Counterfeit Report, “[i]nstead of adhering to their  
27 own standards, embracing the results and protecting the eBay community, eBay

1 retaliated by blocking The Counterfeit Report's corporate eBay accounts. eBay  
2 altered feedback, changed resolved case dispositions and removed counterfeit  
3 comments and warnings protecting consumers and legitimate trademark owners such  
4 as Plaintiff. In contrast, the sellers of counterfeit products remained on eBay, and  
5 transaction fees continued. [eBay] Management did not respond to The Counterfeit  
6 Report's request for comment. The confirmed counterfeit and fake products included  
7 over-the-counter (OTC) drugs, sporting goods, fragrances, auto accessories, phone  
8 chargers and more.”<sup>xliv</sup>

9 182. “The Counterfeit Report reported the offending sellers to eBay, the  
10 manufacturer and the FBI's Internet Crime Complaint Center (IC3), or US customs  
11 for non-US eBay sellers. Disputes on the counterfeit purchases were initiated, and  
12 following eBay's [stated] counterfeit policy, the counterfeit products were not  
13 returned. Trafficking in counterfeits is a crime, and while eBay sellers conceded to the  
14 dispute claims, occasionally admitted to the fakes, and refunded the purchase  
15 amounts, eBay allowed counterfeit sellers and listings to remain on eBay. Even  
16 sellers admitting to selling counterfeits were allowed to remain on the eBay website.  
17 eBay states they do not notify the prior buyers of identified counterfeit sellers, which  
18 may be thousands, that they may have received a counterfeit product.”<sup>xlv</sup>

19 183. According to The Counterfeit Report, “eBay's [blocking] practices are  
20 not unprecedented. Early in the investigation, eBay blocked consumer protection  
21 Counterfeit Product Alert® tips published by The Counterfeit Report [on ebay.com]  
22 to help consumers identify and avoid fake products listed on eBay. An eBay Office-  
23 of-the-President spokesperson stated the alerts didn't violate eBay policy, but claimed  
24 they ‘violated the spirit of eBay’.”<sup>xlvi</sup>

25 184. The free tool that rights owners, such as Plaintiff, can use to report Fake  
26 Products listed on ebay.com to eBay is described as follows on ebay.com under the  
27 heading “How eBay protects intellectual property (VeRO).”

1 We're committed to protecting the intellectual property rights of third parties  
2 and to providing our members with a safe place to buy and sell. We created the  
3 Verified Rights Owner (VeRO) Program so that intellectual property owners  
4 can easily report listings that infringe their rights.

5 We require that a rights owner be registered through VeRO before reporting  
6 items to us. Rights owners sign legally binding documents when reporting  
7 items to eBay.<sup>xlvi</sup>

8 185. As demonstrated herein, The VeRO program is a sham because, among  
9 other things: (1) eBay promotes the unlawful activities of its Unauthorized Sellers by  
10 soliciting eBay buyers to purchase obvious counterfeit products; (2) eBay knowingly  
11 and intentionally protects and conceals the identity of its sellers who it allows to use  
12 ebay.com to engage in the regular and repeated offer and sale of obvious infringing  
13 products; (3) eBay takes no action to remove or block sellers that it knows or should  
14 know are repeat infringers; and (4) eBay takes no proactive steps to identify, isolate,  
15 and remove infringement despite being on notice that certain types and descriptions of  
16 items are ipso facto infringing because they are not offered by the rights holder. eBay  
17 routinely allows its sellers to provide incomplete and/or false "eBay User Personal  
18 Information" so that it is impossible for a trademark owner, such as Plaintiff, to  
19 correctly identify the sellers of Fake Lunatik Products and take action against the  
20 many sellers who use eBay to offer and sell Fake Lunatik Products.

21 186. Plaintiff, as the trademark holder for the Lunatik and TAKTIK® brands  
22 has been signed up on eBay's VERO program as "Lunatik" since at least March 4,  
23 2013. A true and correct copy of the EBAY VERO REPORTING TOOL USER  
24 AGREEMENT between eBay and Plaintiff is annexed hereto as Exhibit 2.

25 187. On or about June 15, 2015, as required by the VeRO Program, Plaintiff  
26 transmitted a request to eBay for eBay User Personal Information for the following  
27  
28

1 eBay sellers of Lunatik Fake Products: usa-cyberlink, usacyber, usgadget-tech, here-  
2 buy, cyber-innovation (Seller 4), laptop-cyber, bearbear-2010.

3 188. Consistent with its policy and practice of protecting and concealing the  
4 identity of sellers engaged in the offer and sale of Fake Products, on June 15, 2015,  
5 Plaintiff received the following response in an email from [vero@eBay.com](mailto:vero@eBay.com):

6 (image continued)

7 ----- Forwarded message -----  
8 From: <[vero@eBay.com](mailto:vero@eBay.com)>  
9 Date: Mon, Jun 15, 2015 at 9:41 AM  
10 Subject: eBay VeRO Program - eBay User Personal Information  
11 To: [lukasikdave@gmail.com](mailto:lukasikdave@gmail.com)  
12  
13 Hello,  
14  
15 Thank you for sending us this Personal Information Request.  
16  
17 We are pleased to provide you with the Member's information. That information is as follows:  
18  
19 usa-cyberlink / [usacyberlink@gmail.com](mailto:usacyberlink@gmail.com)  
20 ???  
21 ??????????????12C, ???, ???, 510000  
22 CN  
23 8602084580920  
24  
25 usacyber / [usacyber000@gmail.com](mailto:usacyber000@gmail.com)  
26 ?? ?  
27 ??????????????12C, ??, ???, 49009  
28 CN  
29 862084580920



1 usgadget-tech / [zhong.beejob@gmail.com](mailto:zhong.beejob@gmail.com)  
 2 ???  
 3 ?????????????????????13A?C?, ???, ???, 510330  
 4 CN  
 5 13610161219

6 here-buy / [herebuy@outlook.com](mailto:herebuy@outlook.com)  
 7 ? ??  
 8 ?????????????????2?E?, ???, ???, 511400  
 9 CN  
 10 8615626232736

11 cyber-innovation / [maizhuhui@hotmail.com](mailto:maizhuhui@hotmail.com)  
 12 ???  
 13 ?????????????????12C, ??, ???, 510000  
 14 CN  
 15 13600030600

16 laptop-cyber / [hjx928@163.com](mailto:hjx928@163.com)  
 17 ? ??  
 18 ?????????????????12A, ???, ???, 510000  
 19 CN  
 20 (86)13422257805

21 bearbear-2010 / [hjx928@hotmail.com](mailto:hjx928@hotmail.com)  
 22 ?? ?  
 23 ?????????????????12C, ??, ???, 510000  
 24 CN  
 25 13600030601

26 Should you have any other questions on the Personal Information Agreement, or concerns  
 27 regarding this matter, please do not hesitate to contact our VeRO Program again.

28 Regards,

VeRO Program  
 eBay Trust & Safety

189. eBay's June 15, 2015 response demonstrates that eBay has manufactured the false optic that, *inter alia*, it has no knowledge or reason to suspect the identity of

1 sellers who are intentionally infringing on its website. eBay received multiple NOCIs  
2 from Plaintiff in 2014 regarding the sale by each of the sellers identified in the eBay  
3 June 15, 2015 email of products that infringe on Plaintiff's Marks. Virtually identical  
4 obvious infringing products continue to be listed on [ebay.com](http://ebay.com) in July 2015 for the  
5 following Sellers 1, 2, 3, 4, 5, 6, 7, 8, 10, and 11. If eBay, in fact, was working to  
6 make ebay.com safer, at a minimum, (i) it would mandate that every seller provide  
7 complete and current contact information, consistent with the requirements of  
8 [FinCEN]; and (ii) it would adopt the best practices for voluntary measures in  
9 addressing the sale of counterfeit products on the Internet, described herein.

10 190. An eBay spokesperson is reported to have informed Julie Bort of the  
11 Business Insider on or about November 11, 2014 that eBay takes accusations of  
12 counterfeits seriously and is quoted as stating "eBay runs several anti-counterfeit  
13 initiatives including the Verified Rights Owner Program, and is continually  
14 introducing new proactive measures to combat the global trade in counterfeits."<sup>xlvi</sup>  
15 But, Plaintiff is not aware of any new proactive measures to combat the rampant offer  
16 and/or sale of Fake Products by eBay since November 2014.

17 191. Rather, consistent with the disclosures in eBay's Annual Report, eBay is  
18 unwilling to refrain from trademark infringement. Specifically, eBay publicly admits  
19 that it has resisted modifying its business practices in response to claims involving  
20 trademark infringement because such changes allegedly could/would increase cost,  
21 lower revenue, make eBay's websites and mobile platforms less convenient to  
22 customers, and require eBay to spend substantial resources to take additional  
23 protective measures or discontinue certain service offerings in order to combat these  
24 known and acknowledged illegal user practices.

**FIRST CAUSE OF ACTION AGAINST eBAY AND**  
**THE SELLER DEFENDANTS**

**(Trademark Infringement Under Sections 32 and 43(a) of the**  
**Lanham Act, 15 U.S.C. §§ 1114, 1125(a))**

192. Plaintiff repeats and realleges each and every allegation in the foregoing paragraphs as though fully set forth herein.

193. Plaintiff's Marks are valid, federally registered trademarks entitled to protection under the Lanham Act.

194. Plaintiff's Marks and the goodwill of the businesses associated with them in the United States and throughout the world are of great and significant value, are highly distinctive and the public and industry associate Plaintiff's Products with high quality materials, style, and functionality.

195. eBay and the Seller Defendants and each of them are engaging in intentional illegal conduct including but not necessarily limited to, the promotion, advertisement, offer for sale, sale and distribution of obvious counterfeit Lunatik products in violation of the Lanham Act, as amended.

196. As alleged more particularly herein, Plaintiff is informed and believes that eBay on a regular and continuous basis promotes the sale of obvious counterfeit Lunatik Products that infringe on Plaintiff's Marks by Unauthorized Sellers by, among other things, the transmittal of automated emails to eBay buyers who have "browsed" similar items.

197. According to eBay, in response to the Plaintiff's NOCIs, each of the Seller Defendants should have been made aware that the Seller Defendant was engaged in the promotion, advertisement, offer for sale, sale and distribution of obvious counterfeit Lunatik Products that infringed on Plaintiff's Marks. Also according to eBay, each of the Seller Defendants should have been instructed to cease and desist from such conduct. In response, the Seller Defendants and each of them

1 did not refrain from the promotion, advertisement, offer for sale, sale and distribution  
2 of obvious counterfeit Lunatik products, as alleged more particularly herein. As of  
3 July 2015, at least nine of the Seller Defendants continue to sell obvious counterfeit  
4 Lunatik Products on ebay.com.

5 198. eBay's and the Seller Defendants' offering of counterfeit Lunatik  
6 products bearing Lunatik registered trademarks is likely to cause consumer confusion  
7 in violation of 15 U.S.C. §1114 by, among other things, selling products of inferior  
8 quality under the brand. eBay's and the Seller Defendants' actions also constitute  
9 unfair competition under 15 U.S.C. §1125(a) by, for example, eliminating Lunatik's  
10 ability to excite the market with new colors of TAKTIK® model phone cases other  
11 than those it legitimately has offered. eBay and the Seller Defendants' actions are  
12 willful and purposeful, in violation of 15 U.S.C. §1117, entitling Lunatik to attorney's  
13 fees and enhanced damages.

14 199. Plaintiff has been damaged by each of eBay's and the Seller Defendants'  
15 infringement in an amount to be determined at trial. For example and without  
16 limitation, eBay and the Seller Defendants and each of them have been unjustly  
17 enriched through their intentional unlawful and unauthorized sales of Fake Lunatik  
18 Products.

19 200. Plaintiff has been, and absent injunctive relief will continue to be,  
20 irreparably harmed by the actions of eBay and the Seller Defendants and each of  
21 them.

22 201. Plaintiff has no adequate remedy at law for the foregoing wrongful  
23 conduct.

**SECOND CAUSE OF ACTION AGAINST eBay**  
**(Contributory Trademark Infringement and**  
**Counterfeiting Under the Lanham Act)**

202. Plaintiff repeats and realleges each and every allegation in the foregoing paragraphs as though fully set forth herein.

203. Plaintiff's Marks are valid, federally registered trademarks entitled to protection under the Lanham Act.

204. Plaintiff's Marks and the goodwill of the businesses associated with them in the United States and throughout the world are of great and significant value, are highly distinctive and the public and industry associate Plaintiff's Products with high quality materials, style, and functionality.

205. The Seller Defendants are engaging in intentional illegal conduct including but not necessarily limited to the promotion, advertisement, offer for sale, sale and distribution of obvious counterfeit Lunatik products in violation of the Lanham Act, as amended. Defendant eBay has actual knowledge of the Seller Defendants illegal activities from, among other things, written notification by Plaintiff to eBay and feedback that eBay collects from buyers.

206. eBay, by offering online marketing, financing, shipping, and/or payment processing to the Seller Defendants that allowed the Seller Defendants to infringe upon Plaintiff's Marks, aided, facilitated, participated in, and materially contributed to the sale of Fake Products in violation of the Lanham Act, 15 U.S.C. §§ 1114, 1116(d), 1117(b)-(c), and 1125(a). For example and without limitation, Defendant eBay, through PayPal participated in the sales of Fake Lunatik Products by accepting the credit card numbers for the sales transactions of Fake Lunatik Products through its wholly-owned subsidiary PayPal, processing the transactions and paying the proceeds of the sales of the Fake Lunatik Products to the Seller Defendants. Further, and without limitation, eBay participated in the sales of Fake Lunatik Products by

1 knowingly allowing Internet merchants to offer Fake Lunatik Products for sale to  
2 consumers, including the use of marketing techniques that infringed upon Plaintiff's  
3 Marks.

4       207. eBay has materially encouraged, enabled and contributed to the  
5 promotion, advertisement, offer for sale, sale and distribution of obvious counterfeit  
6 Lunatik products on ebay.com by, among other things, providing critical online  
7 marketing, financing and/or payment processing to the Seller Defendants, eBay  
8 supplied the necessary marketplace for the sale of Fake Lunatik Products, and eBay  
9 received a direct financial benefit for providing such services.

10       208. eBay exercised control over the means of the infringement, including, the  
11 promotion, advertisement, offer for sale, sale and distribution of obvious counterfeit  
12 Lunatik products on ebay.com, described above. eBay maintains direct control and  
13 monitoring of ebay.com, the instrumentality used by the third party Seller Defendants  
14 to infringe on the plaintiff's mark. eBay knowingly provided essential services to the  
15 Seller Defendants and other Unauthorized Sellers engaged in the promotion,  
16 advertisement, offer for sale, sale and distribution of obvious counterfeit Lunatik  
17 products in violation of the Lanham Act, as amended. For example and without  
18 limitation:

19       a. Defendant PayPal handled the payment transactions for many of the  
20 infringing sales, including sales by the Seller Defendants. Knowing that sellers used  
21 PayPal's payment processing and payment services to facilitate the sale of Fake  
22 Lunatik Products through ebay.com, eBay nonetheless continued to provide such  
23 sellers with PayPal's services.

24       b. ebay.com provided the marketplace for the sales of Fake Lunatik  
25 Products and facilitated the financing and commercial operations of the Seller  
26 Defendants and other eBay sellers involved in the offer and sale of Fake Lunatik  
27 Products by providing marketing and search optimization services that direct buyers  
28



1 to the Fake Lunatik Products, including the knowing use of federally-registered marks  
2 as keywords in order to attract consumers to Fake Lunatik Products offered for sale  
3 by the Seller Defendants, processing online payment transactions for the Fake Lunatik  
4 Products, and shipping the Fake Lunatik Products to consumers.

5 c. ebay.com provided online marketing services to the Seller Defendants  
6 and other eBay sellers whom eBay knew and had reason to know were selling Fake  
7 Lunatik Products based on, *inter alia*, their alleged proactive monitoring of  
8 counterfeit listings and proactive measures to combat the global trade in counterfeits.

9 d. eBay controls who may sell products on their platforms, and online  
10 sellers are required to “verify” their identity before they are allowed to list their  
11 products and services on ebay.com. eBay routinely protects and conceals the identity  
12 of its sellers who are engaged in the offer and/or sale of Fake Products

13 e. eBay facilitates the continued operation of known infringers by allowing  
14 them to continue selling infringing products through similar listings or replacement  
15 listings after being placed on notice that a particular listing infringes and removing it.  
16 It further facilitates this continued operation by returning counterfeit products to the  
17 sellers, only for them to be resold through infringing listings.

18 f. eBay offers search options that help lead consumers to items that eBay  
19 knows or should know are infringing because the brand owner does not make items of  
20 the variety sought by the consumer. Indeed, eBay even sends alerts to consumers  
21 when infringing products become available if none of the type desired are available  
22 when a search is performed.

23 209. The Seller Defendants and other Unauthorized Sellers, with the intent to  
24 pass off or borrow from Plaintiff’s established good will, have displayed and in some  
25 instances continue to display Plaintiff’s Marks on obvious counterfeit Lunatik  
26 Products in violation of the Lanham Act, as amended.

1           210. The intent of the Unauthorized Sellers to cause confusion, as described  
2 herein, coupled with the use by the Unauthorized Sellers of counterfeit marks that  
3 infringe on Plaintiff's Marks, gives rise to a presumption of the likelihood of  
4 confusion.

5           211. eBay's actions described above have caused and are likely to cause  
6 confusion and mistake and to deceive potential customers and the general purchasing  
7 public as to the source, origin, or sponsorship of the Fake Lunatik Products, and are  
8 likely to deceive the public into believing that the Fake Lunatik Products that are the  
9 subject of promotion, advertisement, offer for sale, sale and distribution of obvious  
10 counterfeit Lunatik products by Unauthorized Sellers are associated with, or are  
11 otherwise authorized by Plaintiff, all to the damage and detriment of Plaintiff's  
12 reputation, goodwill, and sales.

13           212. eBay is aware of the infringing activities of its sellers on ebay.com as  
14 alleged herein or has attempted to manufacture the false optic that it is not "willfully  
15 blind" to such unlawful activity. eBay through PayPal investigates chargebacks and  
16 chargeback disputes involving the sale of products of obvious counterfeit Lunatik  
17 products and received documentation that provided eBay with notice that ebay.com  
18 was being used by thousands of sellers in connection with the promotion and sale of  
19 counterfeit iPhone cases that infringe on Plaintiff's Marks. In addition, eBay was  
20 made aware of such activities on or about November 14 2014, when consumer  
21 watchdog organization, The Counterfeit Report, "alerted eBay that it had found  
22 hundreds of counterfeits on the site, including obvious counterfeit Lunatik Product."  
23 In response, "eBay blocked the whistleblower's accounts and removed its comments  
24 warning people about fake products. eBay did this instead of removing the fake  
25 products and blocking the sellers of them."<sup>xlix</sup>

26           213. Given that eBay had received thousands of NOCIs from Lunatik by  
27 November 2014, eBay was already on notice when it received information about the

1 results of The Counterfeit Report's investigation, of the rampant infringement of  
2 Plaintiff's Marks occurring through ebay.com. eBay should have investigated further,  
3 but instead chose to ignore the obvious trademark infringements detailed in The  
4 Counterfeit Report investigative report. eBay's acts and omissions constitute willful  
5 blindness to the rampant infringing activities of its sellers who promote and sell  
6 counterfeit products on ebay.com

7 214. eBay therefore bears contributory liability for the infringement and  
8 counterfeit use of Plaintiff's Marks by the Seller Defendants and other Unauthorized  
9 Sellers, and each of them in violation of 15 U.S.C. § 1051, et seq.

10 215. Plaintiff has been damaged by eBay's contributory infringement in an  
11 amount to be determined at trial and no less than the statutory damages to which  
12 Plaintiff is entitled pursuant to 15 U.S.C. § 1117(c)(2). For example and without  
13 limitation, eBay has been unjustly enriched through the ebay.com sellers' unlawful  
14 and unauthorized sales of Fake Lunatik Products, for which eBay receives income  
15 and/or transaction fees. Further, the Seller Defendants' actions are willful and  
16 purposeful, in violation of 15 U.S.C. §1117, entitling Lunatik to attorney's fees and  
17 enhanced damages.

18 216. Plaintiff has been, and absent injunctive relief will continue to be,  
19 irreparably harmed by eBay's actions.

20 217. Plaintiff has no adequate remedy at law for the foregoing wrongful  
21 conduct.

22 **THIRD CAUSE OF ACTION AGAINST eBAY AND**  
23 **THE SELLER DEFENDANTS**

24 **(Trademark Dilution Under Section 43(c) of the**  
25 **Lanham Act, 15 U.S.C. § 1125(c))**

26 218. Plaintiff repeats and realleges each and every allegation in the foregoing  
27 paragraphs as though fully set forth herein.

1           219. Plaintiff's Marks have become famous marks within the meaning of the  
2 Trademark Dilution Revision Act of 2006, and are immediately recognizable to the  
3 relevant public as being associated with Lunatik. Plaintiff's Marks are the subject of  
4 valid and subsisting registrations under the Lanham Act.

5           220. Because Plaintiff's Products have gained a reputation for superior quality  
6 and excellence, Plaintiff's Marks have gained substantial renown and reputation.

7           221. Defendants' use of Plaintiff's Marks is likely to cause blurring to and of  
8 Plaintiff's Marks and impair the distinctiveness of Plaintiff's Marks. Consumers are  
9 likely to associate Defendants' uses of Plaintiff's Marks with the Plaintiff's Marks  
10 themselves because of the similarity between Defendants' use of Plaintiff's Marks  
11 and Plaintiff's Marks themselves. In particular, the following factors make dilution  
12 by blurring likely: (1) Defendants are making uses of Plaintiff's Marks themselves;  
13 (2) Plaintiff's Marks have acquired tremendous distinctiveness through Plaintiff's  
14 continuous promotion and uses of Plaintiffs' Marks; (3) Plaintiff's Marks have  
15 become famous and achieved a high level of recognition among the consuming  
16 public; (4) Plaintiff's commercial use of its Marks is substantially exclusive to  
17 Plaintiff and its agents and licensees; (5) Defendants intend to create an association  
18 between Defendants' uses of Plaintiff's Marks and Plaintiff's Marks themselves; and  
19 (6) on information and belief, many consumers actually associate Defendants' uses of  
20 Plaintiff's Marks confusingly similar thereto with Plaintiff's Marks themselves.

21           222. Defendants' conduct as alleged above is also likely to cause tarnishment  
22 among Plaintiff's Marks that harms the reputation of Plaintiff because of the  
23 similarity between Defendants' uses of Plaintiff's Marks and Plaintiff's Marks  
24 themselves. In particular, the Fake Lunatik Products sold, offered for sale, and/or  
25 distributed by Defendants, which are of notoriously bad quality and made with cheap  
26 materials, display Plaintiff's Marks in a manner that is confusingly similar to  
27

1 Plaintiff's Products and therefore mislead consumers to believe that Plaintiff's  
2 Products are of low quality.

3 223. Defendants' conduct described above dilutes, blurs, tarnishes, and  
4 whittles away at the distinctiveness of Plaintiff's Marks, and has caused actual  
5 dilution and has detracted from the distinctiveness of the famous Plaintiff's Marks  
6 with consequent damage to Plaintiff and to the substantial business and goodwill  
7 symbolized by Plaintiff's Marks in violation of the Federal Trademark Dilution Act, 15  
8 U.S.C. § 1125(c).

9 224. Defendants' acts of trademark dilution have caused and, unless restrained  
10 will continue to cause, great and irreparable injury to Plaintiff, to Plaintiff's Marks,  
11 and to the substantial business and goodwill represented thereby, in an amount that  
12 cannot be presently ascertained, leaving Plaintiff with no adequate remedy at law.

13 225. Defendants' conduct has been undertaken with a willful intent to trade on  
14 the reputation of Plaintiff and to cause dilution of the famous Plaintiff's Marks, and  
15 this conduct entitles Plaintiff to damages and the other remedies available pursuant to  
16 15 U.S.C. § 1125(c)(2).

17 **FOURTH CAUSE OF ACTION AGAINST eBay**

18 **(Direct Trademark Infringement Through Initial Interest Confusion)**

19 226. Plaintiff repeats and realleges each and every allegation in the foregoing  
20 paragraphs as though fully set forth herein.

21 227. Plaintiff's Marks are valid, federally registered trademarks entitled to  
22 protection under the Lanham Act.

23 228. Plaintiff's Marks and the goodwill of the businesses associated with them  
24 in the United States and throughout the world are of great and significant value, are  
25 highly distinctive and the public and industry associate Plaintiff's Products with high  
26 quality materials, style, and functionality.





**FIFTH CAUSE OF ACTION AGAINST ALL DEFENDANTS**  
**(Violations of Racketeer Influenced and Corrupt Organizations Act**  
**(“RICO”) 18 U.S.C. § 1962(c))**

237. Plaintiff repeats and realleges each and every allegation in the foregoing paragraphs as though fully set forth herein.

238. At all relevant times, Plaintiff is a person within the meaning of 18 U.S.C. §§1961(3) and 1962(c).

239. At all relevant times, each Defendant is a person within the meaning of 18 U.S.C. §§1961(3) and 1962(c).

**The RICO Enterprise**

240. The Defendants and their co-conspirators constitute an association-in-fact enterprise within the meaning of 18 U.S.C. §§ 1961(4) and 1962(c), referred to herein as the “Enterprise.” Each of the Defendants participated in the operation or management of the Enterprise because they engaged in acts that they knew would further the scheme to sell and profit from the sale of obvious Fake Lunatik Products, and that they further intended to further that scheme, and exercised substantial discretion in doing so.

241. The Enterprise consists of eBay, PayPal, the Seller Defendants, and other Unauthorized Sellers, some of whom are unidentified co-conspirators, using eBay.com to effect the promotion, advertisement, offer for sale, sale and distribution of obvious counterfeit Lunatik products in violation of the Lanham Act, who have joined together to form an enterprise in fact whose purpose is to sell and profit from the promotion, advertisement, offer for sale, sale and distribution of obvious counterfeit Lunatik products. The Unauthorized Sellers knowingly have engaged in the promotion, advertisement, offer for sale, sale and distribution of obvious counterfeit Lunatik products, using eBay.com and the eBay and PayPal Defendants’ services to effect such activities. eBay knowingly provided the Seller Defendants

1 with the online marketplace and other services to facilitate the activities of the  
2 Unauthorized Sellers, including marketing, shipping and/or financing services that  
3 allowed the Seller Defendants to transact their illegal sales of the Fake Lunatik  
4 Products, and from which Defendants eBay and PayPal derived substantial profits.

5 242. Defendants and their co-conspirators are a group of persons associated  
6 together in fact for the common purpose of carrying out an ongoing criminal  
7 enterprise, as described in the foregoing paragraphs of this Complaint; namely,  
8 through a systematized operation to sell and profit from the sale of obvious  
9 counterfeit goods including obvious Fake Lunatik Products that infringe on one or  
10 more of Plaintiff's Marks. These Defendants and their co-conspirators have  
11 organized their activities into a cohesive group with specific and assigned  
12 responsibilities and division of tasks, operating in the United States, China, and  
13 elsewhere. Merchants including the Unauthorized Sellers have engaged in the  
14 promotion, advertisement, offer for sale, sale and distribution of obvious counterfeit  
15 Lunatik products through ebay.com. While Plaintiff is informed and believes that the  
16 membership of this Enterprise has changed over time and its members may have held  
17 different roles at different times, the Enterprise has generally been structured to  
18 operate as a unit in order to accomplish the goals of the criminal scheme, profiting  
19 from the promotion, advertisement, offer for sale, sale and distribution of obvious  
20 counterfeit Lunatik products in violation of the Lanham Act, as amended, including  
21 through the following acts:

22 a. eBay and PayPal have participated in the operation and management of  
23 the Enterprise by knowingly facilitating the promotion, advertisement, offer for sale,  
24 sale and distribution of obvious counterfeit Lunatik products, including, *inter alia*,  
25 Fake Products that bear Plaintiff's Marks and copy the designs and packaging  
26 associated with Plaintiff's Products, through ebay.com. Specifically, eBay knowingly  
27 provides sellers of Fake Lunatik Products with storefronts on ebay.com and (i)

1 permits them to list their Fake Lunatik Products for sale, (ii) permits known sellers of  
2 obvious Fake Lunatik Products to continue selling obvious Fake Lunatik Products on  
3 ebay.com, (iii) provides marketing and search optimization services that direct buyers  
4 to the Fake Lunatik Products, which use federally-registered marks as keywords in  
5 order to attract consumers to Fake Lunatik Products offered for sale by the  
6 Unauthorized Sellers, and insert additional terms and phrases into the metadata for  
7 searches performed on ebay.com in order to direct consumers to particular Fake  
8 Lunatik Products offered for sale. In addition, eBay has directed other conspirators to  
9 take actions necessary to accomplish the overall aims of the criminal enterprise—  
10 namely, processing payments for the sale of Fake Lunatik Products, and providing  
11 shipping and delivery services for Fake Lunatik Products purchased through  
12 eBay.com. There can be no doubt that this is willful and intentional. eBay's  
13 knowledge is demonstrated by at least the following (i) the fact that the Fake Lunatik  
14 Products sold on ebay.com obviously infringe on Plaintiff's Marks because the Fake  
15 Lunatik Products that bear Plaintiff's Marks, identified in the listings, are not in  
16 Plaintiff's product line; (ii) Plaintiff's repeated notifications to eBay regarding the  
17 presence of Fake Lunatik Products on ebay.com; (iii) eBay's ineffective takedown  
18 procedures; (iv) eBay's practices and policies that conceal and protect the identity of  
19 eBay sellers responsible for the offer and sale of Fake Lunatik Products; (v) the  
20 knowing use of federally-registered marks as keywords in order to attract consumers  
21 to Fake Lunatik Products offered for sale by the Seller Defendants; (vi) the  
22 association of specific metadata with keywords to direct prospective purchasers to  
23 storefronts selling Fake Lunatik Products; and (vii) eBay's failure to adopt recognized  
24 best practices for voluntary measures in addressing the sale of counterfeit products on  
25 the Internet for either eBay or PayPal.

26       b. Defendant PayPal has also participated in the operation and management  
27 of the Enterprise by processing the transactions for the sale of Fake Lunatik Products,  
28

1 conducting online payment processing for counterfeit goods purchased through  
2 ebay.com, including Fake Lunatik Products that infringe on one or more of Plaintiff's  
3 Trademarks.

4 c. The Seller Defendants have also participated in the operation and  
5 management of the Enterprise by the promotion, advertisement, offer for sale, sale  
6 and distribution of obvious counterfeit Lunatik products on ebay.com. The Seller  
7 Defendants' knowledge and intent is demonstrated by their knowing and conscious  
8 promotion, advertisement, offer for sale, sale and distribution of obvious counterfeit  
9 Lunatik products on ebay.com, and their repeated shipment of such goods to the  
10 United States and elsewhere.

11 d. Unidentified co-conspirators have been integrally involved in various  
12 stages of the Defendants' criminal enterprise, directing, controlling, ratifying,  
13 facilitating, or otherwise participating in the manufacture, distribution, sale, and  
14 advertisement of Fake Lunatik Products through ebay.com.

15 243. At all relevant times, the Enterprise was engaged in, and its activities  
16 affected, interstate and foreign commerce within the meaning of 18 U.S.C. § 1962(c),  
17 because Defendants have sold and continue to sell a substantial volume of Fake  
18 Lunatik Products into the United States, causing harm to Plaintiff in their business  
19 and property.

#### 20 **Pattern of Racketeering Activity**

21 244. The Defendants conducted or participated, directly or indirectly, in the  
22 conduct, management, or operation of the Enterprise's affairs through a "pattern of  
23 racketeering activity" within the meaning of 18 U.S.C. § 1961(5) and in violation of  
24 18 U.S.C. § 1962(c). This pattern included multiple instances of trafficking in  
25 counterfeit goods in violation of 18 U.S.C. § 2320(a)(1), and wire fraud in violation  
26 of 18 U.S.C. §§ 1341, 1343. These predicate acts are all related to each other and to  
27 the Enterprise's purpose of selling and profiting from the sale of counterfeit goods.

1 Moreover, this pattern has been ongoing and will likely continue into the future.  
2 Indeed, Plaintiff is informed and believes that there are at least fifty storefronts on  
3 ebay.com now involved in the promotion, advertisement, offer for sale, sale and  
4 distribution of obvious counterfeit Lunatik products on ebay.com. Each sale of Fake  
5 Lunatik Products, and each transfer of funds in payment for the purchase of Fake  
6 Lunatik Products, causes new injury to Plaintiff in the form of brand dilution, loss of  
7 goodwill and lost sales, as set forth below, injuries that Plaintiff would not have  
8 suffered but for the conduct of the Enterprise.

9 **Pattern of Racketeering Activity:**

10 **Numerous Instances of Trafficking in Counterfeit Goods**

11 **In Violation of 18 U.S.C. § 2320(a)(1)**

12 245. At all times material to this Complaint, Plaintiff was engaged in  
13 interstate commerce and in an industry that affects interstate commerce.

14 246. As described herein, Defendants have engineered an organized operation  
15 to offer, sell and profit from the sale of counterfeit goods through ebay.com by, and  
16 among other things, the promotion, advertisement, offer for sale, sale and distribution  
17 of obvious counterfeit Lunatik products which in listings on ebay.com bear marks that  
18 are identical to, or substantially indistinguishable from, Plaintiff's federally registered  
19 marks, the use of which is likely to cause confusion, mistake, or to deceive— are  
20 used.

21 247. In furtherance of their scheme, and as described herein, Defendants  
22 transported, transferred, or otherwise disposed of—and attempted to transport,  
23 transfer, or otherwise dispose of—counterfeit goods sold on ebay.com to their online  
24 purchasers in exchange for money, and/or made or obtained control of the counterfeit  
25 goods with intent to so transport, transfer, or dispose of. Such counterfeit goods that  
26 Defendants transported, transferred, or otherwise disposed of, or made or obtained  
27 control of with intent to so transport, transfer, or dispose of, include, but are not  
28



1 limited to, Fake Products that infringe on one or more of Plaintiff's Trademarks by  
2 copying the designs and packaging associated with Plaintiff's Products. While  
3 Plaintiff contends that Defendants' sale and transport of such Fake Lunatik Products  
4 is vast in volume and will be revealed by discovery in this action, such sales and  
5 transport to the United States include at least the following instances:

- 6 a. On or about May 27, 2015, Seller 1 caused a listing to be posted on  
7 ebay.com for the sale of obvious Fake Lunatik iPhone cases for iPhone 6.  
8 It has been reported on ebay.com that Seller 1 has sold at least 10,520  
9 counterfeit Lunatik iPhone cases. As alleged more particularly herein,  
10 eBay continues to allow Seller 1 to list for sale obvious counterfeit  
11 iPhone cases on ebay.com that unlawfully infringe on Plaintiff's Marks.
- 12 b. On or about July 27, 2015, Seller 2 caused a listing to be posted on  
13 ebay.com for the of the following obvious Fake Lunatik iPhone cases:  
14 "Waterproof Shockproof Aluminum Grilla Glass Metal Case Cover For  
15 Apple iPhone @@" It has been reported on ebay.com that Seller 2 has  
16 sold at least 2,711 counterfeit Lunatik iPhone cases. As alleged more  
17 particularly herein, eBay continues to allow Seller 2 to list for sale  
18 obvious counterfeit iPhone cases on ebay.com that unlawfully infringe  
19 on Plaintiff's Marks.
- 20 c. On or about May 19, 2015, Seller 3 caused multiple listings to be posted  
21 on ebay.com for the sale of obvious Fake Lunatik iPhone cases for  
22 iPhone 5. It has been reported on ebay.com that Seller 3 has sold at least  
23 25,069 counterfeit Lunatik iPhone cases.
- 24 d. On or about May 27, 2015, Seller 3 caused at least two listings to be  
25 posted on ebay.com for the sale of obvious Fake Lunatik iPhone cases  
26 for iPhone 5. As alleged more particularly herein, eBay continues to  
27 allow Seller 3 to list for sale obvious counterfeit iPhone cases on  
28

1 ebay.com that unlawfully infringe on Plaintiff's Marks.

2 e. On or about July 15, 2014, Seller 4 caused multiple listings to be posted  
3 on ebay.com for the sale of obvious Fake Lunatik TAKTIK iPhone  
4 cases. It has been reported on ebay.com that Seller 4 has sold at least  
5 4,088 counterfeit Lunatik iPhone cases. As alleged more particularly  
6 herein, eBay continues to allow Seller 4 to list for sale obvious  
7 counterfeit iPhone cases on ebay.com that unlawfully infringe on  
8 Plaintiff's Marks.

9 f. On or about July 18, 2015, Seller 5 caused a listing to be posted on  
10 ebay.com for sale of the following obvious Fake Lunatik iPhone cases:  
11 "Waterproof Shockproof Aluminum Gorilla Metal Cover Case For  
12 iPhone Models. Available for iPhone 6 + 6PLUS + 4/4S/5/5S/5C." It  
13 has been reported on ebay.com that Seller 5 has sold at least 10,448  
14 counterfeit Lunatik iPhone cases. As alleged more particularly herein,  
15 eBay continues to allow Seller 5 to list for sale obvious counterfeit  
16 iPhone cases on ebay.com that unlawfully infringe on Plaintiff's Marks.

17 g. On or about July 15, 2014, Seller 6 caused multiple listings to be posted  
18 on ebay.com for the sale of obvious Fake Lunatik TAKTIK iPhone  
19 cases. It has been reported on ebay.com that Seller 6 has sold at least  
20 299 counterfeit Lunatik iPhone cases. As alleged more particularly  
21 herein, eBay continues to allow Seller 6 to list for sale obvious  
22 counterfeit iPhone cases on ebay.com that unlawfully infringe on  
23 Plaintiff's Marks.

24 h. On or about July 15, 2014, Seller 7 caused multiple listings to be posted  
25 on ebay.com for the sale of obvious Fake Lunatik TAKTIK iPhone  
26 cases. It has been reported on ebay.com that Seller 7 has sold at least  
27 337 counterfeit Lunatik iPhone cases. As alleged more particularly  
28

1           herein, eBay continues to allow Seller 7 to list for sale obvious  
2           counterfeit iPhone cases on ebay.com that unlawfully infringe on  
3           Plaintiff's Marks.

4           i.    On or about July 15, 2014, Seller 8 caused multiple listings to be posted  
5           on ebay.com for the sale of obvious Fake Lunatik TAKTIK iPhone  
6           cases. It has been reported on ebay.com that Seller 8 has sold at least  
7           586 counterfeit Lunatik iPhone cases. As alleged more particularly  
8           herein, eBay continues to allow Seller 8 to list for sale obvious  
9           counterfeit iPhone cases on ebay.com that unlawfully infringe on  
10          Plaintiff's Marks.

11          j.    On or about July 15, 2014, Seller 9 caused multiple listings to be posted  
12          on ebay.com for the sale of obvious Fake Lunatik TAKTIK iPhone  
13          cases.

14          k.    On or about June 1, 2015, Seller 9 caused multiple listings to be posted  
15          on ebay.com for the sale of obvious Fake Lunatik iPhone cases for  
16          iPhone 5 and iPhone 6. It has been reported on ebay.com that Seller 9  
17          sold at least 787 counterfeit Lunatik iPhone cases.

18          As alleged more particularly herein, eBay continues to allow Seller 9 to  
19          list for sale obvious counterfeit iPhone cases on ebay.com that  
20          unlawfully infringe on Plaintiff's Marks.

21          l.    On or about July 15, 2014, Seller 10 caused multiple listings to be posted  
22          on ebay.com for the sale of obvious Fake Lunatik TAKTIK iPhone  
23          cases. It has been reported on ebay.com that Seller 9 has sold at least  
24          288 counterfeit Lunatik iPhone cases. As alleged more particularly  
25          herein, eBay continues to allow Seller 10 to list for sale obvious  
26          counterfeit iPhone cases on ebay.com that unlawfully infringe on  
27          Plaintiff's Marks.

- 1 m. On or about July 15, 2014, Seller 11 caused multiple listings to be posted  
2 on ebay.com for the sale of obvious Fake Lunatik TAKTIK iPhone  
3 cases. It has been reported on ebay.com that Seller 11 has sold at least  
4 54 counterfeit Lunatik iPhone cases. As alleged more particularly  
5 herein, eBay continues to allow Seller 11 to list for sale obvious  
6 counterfeit iPhone cases on ebay.com that unlawfully infringe on  
7 Plaintiff's Marks.
- 8 n. On or about July 25, 2015, eBay transmitted an email to an eBay buyer  
9 offering to sell counterfeit Lunatik iPhone cases described as  
10 "Waterproof Shockproof Aluminum Grilla [sic] Glass Metal Case Cover  
11 for Apple iPhone @@" for \$9.23. Days later, on July 30, 2015, the same  
12 eBay buyer was directly solicited by eBay to purchase obvious  
13 counterfeit Lunatik iPhone cases.
- 14 o. Plaintiff is informed and believe that eBay directly solicited a buyer to  
15 purchase some or all of the following Fake Lunatik Products on or about  
16 the dated indicated:
- 17 (i) On or about June 24, 2015, eBay directly solicited a buyer to  
18 purchase a counterfeit yellow aluminum LUNATIK branded  
19 iPhone 6 Cell Phone Case listed on ebay.com by eBay seller  
20 "firsttopmall2013 (7892)."
- 21 (ii) On or about June 24, 2015, eBay directly solicited a buyer to  
22 purchase a counterfeit red aluminum LUNATIK branded iPhone 6  
23 Cell Phone Case listed on ebay.com by eBay seller "misskiss6699  
24 (729)."
- 25 (iii) On or about June 24, 2015, eBay directly solicited a buyer to  
26 purchase a counterfeit black aluminum LUNATIK branded iPhone  
27  
28

1 6 Cell Phone Case listed on ebay.com by eBay seller “max-access  
2 (799).”

3 (iv) On or about June 4, 2015, eBay directly solicited a buyer to  
4 purchase counterfeit gold plated and yellow aluminum LUNATIK  
5 branded and boxed TakTik iPhone 4 Cell Phone Cases listed on  
6 ebay.com by eBay seller “et8shop\_hy (20731)”

7 (v) On or about May 15, 2015, eBay directly a buyer to purchase a  
8 counterfeit black aluminum LUNATIK branded and packaged  
9 TakTik Extreme iPhone 6 Cell Phone Case listed on ebay.com by  
10 eBay seller “9hkk0432 (152).”

11 (vi) On or about January 15, 2015, eBay directly solicited a buyer to  
12 purchase a counterfeit gold aluminum LUNATIK branded iPhone  
13 5 Cell Phone Case listed on ebay.com by eBay seller  
14 “uncletommall (11661).

15 (vii) On or about November 30, 2014, eBay directly solicited a buyer to  
16 purchase a counterfeit yellow aluminum LUNATIK branded  
17 iPhone 5 Cell Phone Case listed on ebay.com by eBay seller  
18 “slysky6688 (3493).

19 (viii) On or about November 30, 2014, eBay directly solicited a buyer to  
20 purchase a counterfeit red aluminum LUNATIK branded iPhone 5  
21 Cell Phone Case listed on ebay.com by eBay seller  
22 “sohishopping525 (8380).

23 (ix) On or about May 15, 2015, eBay directly solicited a buyer to  
24 purchase a counterfeit white aluminum LUNATIK branded and  
25 packaged TakTik Extreme iPhone 6 Cell Phone Case listed on  
26 ebay.com by eBay seller “Casemasterelite (136).”  
27  
28

1 (x) On or about May 15, 2015, eBay directly solicited a buyer to  
2 purchase a white counterfeit aluminum LUNATIK branded and  
3 packaged TakTik Extreme iPhone 6 Cell Phone Case listed on  
4 ebay.com by eBay seller “ultradeal2013 (2566).

5 (xi) On or about May 12, 2015, eBay directly solicited a buyer to  
6 purchase a black counterfeit aluminum LUNATIK branded and  
7 packaged TakTik Extreme iPhone 5 Cell Phone Case listed on  
8 ebay.com by eBay seller “alanw (22).

9 (xii) On or about May 12, 2015, eBay directly solicited a buyer to  
10 purchase a silver counterfeit aluminum LUNATIK branded and  
11 packaged TakTik Extreme iPhone 6 Cell Phone Case listed on  
12 ebay.com by eBay seller “nysltd (9530).”

13 (xiii) On or about February 16, 2015, eBay directly solicited a buyer to  
14 purchase a counterfeit aluminum LUNATIK branded and  
15 packaged TakTik Extreme iPhone 6 Cell Phone Case listed on  
16 ebay.com by eBay seller “b4sos (266).”

17 248. Defendants participated in the scheme knowing full well that the goods  
18 they were (1) transporting, transferring, or otherwise disposing of; (2) attempting to  
19 transport, transfer, or otherwise dispose of; and/or (3) making or obtaining control of  
20 with intent to so transport, transfer, or dispose of, were counterfeit. Defendants are  
21 engaged in a wide-ranging scheme to sell and profit from the sale of goods upon  
22 which or in connection with which counterfeit marks are knowingly used.

23 249. Moreover, Defendants’ participation in the scheme was intentional—  
24 Defendants intended to (1) transport, transfer, or otherwise dispose of; (2) attempt to  
25 transport, transfer, or otherwise dispose of; and/or (3) make or control goods known  
26 by them to be counterfeit.



1        250. Accordingly, Defendants have unlawfully trafficked and attempted to  
2 traffic, as that term is defined in 18 U.S.C. § 2320(e)(2), goods upon which or in  
3 connection with which counterfeit marks, as that term is defined in 18 U.S.C. §  
4 2320(f)(1), were used, in violation of 18 U.S.C. § 2320(a)(1).

5            **Pattern of Racketeering Activity: Multiple Instances of Wire Fraud**

6                    **In Violation of 18 U.S.C. § 1343**

7        251. As described herein, the Enterprise has engaged in a scheme to sell and  
8 profit from the sale of counterfeit goods through ebay.com by, among other things,  
9 the promotion, advertisement, offer for sale, sale and distribution of obvious  
10 counterfeit Lunatik products. In furtherance of this scheme, the Enterprise has  
11 engaged in multiple counts of wire fraud in violation of 18 U.S.C. § 1343.  
12 Specifically, Defendants' misappropriation of Plaintiff's intellectual property through  
13 the promotion, sale, and shipment of Fake Lunatik Products for profit, constitutes a  
14 "scheme or artifice to defraud, or for obtaining money or property by means of false  
15 or fraudulent pretenses, representations, or promises," within the meaning of Section  
16 1343, and Defendants have knowingly transmitted or caused to be transmitted by  
17 means of wire communication in interstate and foreign commerce multiple  
18 communications for the purpose of executing this scheme, specifically through the  
19 operation of interactive websites used to promote and sell Fake Lunatik Products,  
20 including specifically targeting consumers in the United States, and by means of  
21 electronic communications used to facilitate and complete such sales with consumers  
22 in the United States and elsewhere. By means of this scheme, Defendants have (1)  
23 obtained money from consumers purchasing Fake Lunatik Products because of their  
24 misappropriation of Plaintiff's Marks; and (2) wrongfully obtained the value of  
25 Plaintiff's intellectual property through the sale of Fake Lunatik Products. This  
26 conduct has directly harmed both consumers and Plaintiff by sowing confusion  
27 among consumers seeking authentic Plaintiff's Products and post-sale confusion

1 among consumers who come in contact with the Fake Products and associate their  
2 inferior quality with Plaintiff's Marks.

3 252. As evidenced by the routine nature of Defendants' promotion and sale of  
4 counterfeit items and the volume of traffic experienced by ebay.com, Plaintiff  
5 believes that the actual volume of Defendants' use of the sales and shipments of Fake  
6 Lunatik Products to customers in the United States and elsewhere is vast and will be  
7 revealed in discovery in this action, but such sales and shipments include at least the  
8 following specific instances:

9 a. On or about May 27, 2015, Seller 1 caused a listing to be posted on  
10 ebay.com for the sale of obvious Fake Lunatik iPhone cases for iPhone 6.  
11 It has been reported on ebay.com that Seller 1 has sold at least 10,520  
12 counterfeit Lunatik iPhone cases. As alleged more particularly herein,  
13 eBay continues to allow Seller 1 to list for sale obvious counterfeit  
14 iPhone cases on ebay.com that unlawfully infringe on Plaintiff's Marks.

15 b. On or about July 27, 2015, Seller 2 caused a listing to be posted on  
16 ebay.com for the of the following obvious Fake Lunatik iPhone cases:  
17 "Waterproof Shockproof Aluminum Grilla Glass Metal Case Cover For  
18 Apple iPhone @@" It has been reported on ebay.com that Seller 2 has  
19 sold at least 2,711 counterfeit Lunatik iPhone cases. As alleged more  
20 particularly herein, eBay continues to allow Seller 2 to list for sale  
21 obvious counterfeit iPhone cases on ebay.com that unlawfully infringe  
22 on Plaintiff's Marks.

23 c. On or about May 19, 2015, Seller 3 caused multiple listings to be posted  
24 on ebay.com for the sale of obvious Fake Lunatik iPhone cases for  
25 iPhone 5. It has been reported on ebay.com that Seller 3 has sold at least  
26 25,069 counterfeit Lunatik iPhone cases.

- 1 d. On or about May 27, 2015, Seller 3 caused at least two listings to be  
2 posted on ebay.com for the sale of obvious Fake Lunatik iPhone cases  
3 for iPhone 5. As alleged more particularly herein, eBay continues to  
4 allow Seller 3 to list for sale obvious counterfeit iPhone cases on  
5 ebay.com that unlawfully infringe on Plaintiff's Marks.
- 6 e. On or about July 15, 2014, Seller 4 caused multiple listings to be posted  
7 on ebay.com for the sale of obvious Fake Lunatik TAKTIK iPhone  
8 cases. It has been reported on ebay.com that Seller 4 has sold at least  
9 4,088 counterfeit Lunatik iPhone cases. As alleged more particularly  
10 herein, eBay continues to allow Seller 4 to list for sale obvious  
11 counterfeit iPhone cases on ebay.com that unlawfully infringe on  
12 Plaintiff's Marks.
- 13 f. On or about July 18, 2015, Seller 5 caused a listing to be posted on  
14 ebay.com for sale of the following obvious Fake Lunatik iPhone cases:  
15 "Waterproof Shockproof Aluminum Gorilla Metal Cover Case For  
16 iPhone Models. Available for iPhone 6 + 6PLUS + 4/4S/5/5S/5C." It  
17 has been reported on ebay.com that Seller 5 has sold at least 10,448  
18 counterfeit Lunatik iPhone cases. As alleged more particularly herein,  
19 eBay continues to allow Seller 5 to list for sale obvious counterfeit  
20 iPhone cases on ebay.com that unlawfully infringe on Plaintiff's Marks.
- 21 g. On or about July 15, 2014, Seller 6 caused multiple listings to be posted  
22 on ebay.com for the sale of obvious Fake Lunatik TAKTIK iPhone  
23 cases. It has been reported on ebay.com that Seller 6 has sold at least  
24 299 counterfeit Lunatik iPhone cases. As alleged more particularly  
25 herein, eBay continues to allow Seller 6 to list for sale obvious  
26 counterfeit iPhone cases on ebay.com that unlawfully infringe on  
27 Plaintiff's Marks.

- 1           h.     On or about July 15, 2014, Seller 7 caused multiple listings to be posted  
2               on ebay.com for the sale of obvious Fake Lunatik TAKTIK iPhone  
3               cases. It has been reported on ebay.com that Seller 7 has sold at least  
4               337 counterfeit Lunatik iPhone cases. As alleged more particularly  
5               herein, eBay continues to allow Seller 7 to list for sale obvious  
6               counterfeit iPhone cases on ebay.com that unlawfully infringe on  
7               Plaintiff's Marks.
- 8           i.     On or about July 15, 2014, Seller 8 caused multiple listings to be posted  
9               on ebay.com for the sale of obvious Fake Lunatik TAKTIK iPhone  
10              cases. It has been reported on ebay.com that Seller 8 has sold at least  
11              586 counterfeit Lunatik iPhone cases. As alleged more particularly  
12              herein, eBay continues to allow Seller 8 to list for sale obvious  
13              counterfeit iPhone cases on ebay.com that unlawfully infringe on  
14              Plaintiff's Marks.
- 15          j.     On or about July 15, 2014, Seller 9 caused multiple listings to be posted  
16               on ebay.com for the sale of obvious Fake Lunatik TAKTIK iPhone  
17               cases.
- 18          k.     On or about June 1, 2015, Seller 9 caused multiple listings to be posted  
19               on ebay.com for the sale of obvious Fake Lunatik iPhone cases for  
20               iPhone 5 and iPhone 6. It has been reported on ebay.com that Seller 9  
21               sold at least 787 counterfeit Lunatik iPhone cases.  
22               As alleged more particularly herein, eBay continues to allow Seller 9 to  
23               list for sale obvious counterfeit iPhone cases on ebay.com that  
24               unlawfully infringe on Plaintiff's Marks.
- 25          l.     On or about July 15, 2014, Seller 10 caused multiple listings to be posted  
26               on ebay.com for the sale of obvious Fake Lunatik TAKTIK iPhone  
27               cases. It has been reported on ebay.com that Seller 9 has sold at least  
28

1           288 counterfeit Lunatik iPhone cases. As alleged more particularly  
2           herein, eBay continues to allow Seller 10 to list for sale obvious  
3           counterfeit iPhone cases on ebay.com that unlawfully infringe on  
4           Plaintiff's Marks.

5           m. On or about July 15, 2014, Seller 11 caused multiple listings to be posted  
6           on ebay.com for the sale of obvious Fake Lunatik TAKTIK iPhone  
7           cases. It has been reported on ebay.com that Seller 11 has sold at least  
8           54 counterfeit Lunatik iPhone cases. As alleged more particularly  
9           herein, eBay continues to allow Seller 11 to list for sale obvious  
10          counterfeit iPhone cases on ebay.com that unlawfully infringe on  
11          Plaintiff's Marks.

12          n. On or about July 25, 2015, eBay transmitted an email to an eBay buyer  
13          offering to sell counterfeit Lunatik iPhone cases described as  
14          "Waterproof Shockproof Aluminum Grilla [sic] Glass Metal Case Cover  
15          for Apple iPhone @@" for \$9.23. Days later, on July 30, 2015, the same  
16          eBay buyer was directly solicited by eBay to purchase obvious  
17          counterfeit Lunatik iPhone cases.

18          o. Plaintiff is informed and believe that eBay directly solicited a buyer to  
19          purchase some or all of the following Fake Lunatik Products on or about  
20          the dated indicated:

21           (i) On or about June 24, 2015, eBay directly solicited a buyer to  
22           purchase a counterfeit yellow aluminum LUNATIK branded  
23           iPhone 6 Cell Phone Case listed on ebay.com by eBay seller  
24           "firsttopmall2013 (7892)."

25           (ii) On or about June 24, 2015, eBay directly solicited a buyer to  
26           purchase a counterfeit red aluminum LUNATIK branded iPhone 6  
27

1 Cell Phone Case listed on ebay.com by eBay seller “misskiss6699  
2 (729).”

3 (iii) On or about June 24, 2015, eBay directly solicited a buyer to  
4 purchase a counterfeit black aluminum LUNATIK branded iPhone  
5 6 Cell Phone Case listed on ebay.com by eBay seller “max-access  
6 (799).”

7 (iv) On or about June 4, 2015, eBay directly solicited a buyer to  
8 purchase counterfeit gold plated and yellow aluminum LUNATIK  
9 branded and boxed TakTik iPhone 4 Cell Phone Cases listed on  
10 ebay.com by eBay seller “et8shop\_hy (20731)”

11 (v) On or about May 15, 2015, eBay directly a buyer to purchase a  
12 counterfeit black aluminum LUNATIK branded and packaged  
13 TakTik Extreme iPhone 6 Cell Phone Case listed on ebay.com by  
14 eBay seller “9hkk0432 (152).”

15 (vi) On or about January 15, 2015, eBay directly solicited a buyer to  
16 purchase a counterfeit gold aluminum LUNATIK branded iPhone  
17 5 Cell Phone Case listed on ebay.com by eBay seller  
18 “uncletommall (11661).

19 (vii) On or about November 30, 2014, eBay directly solicited a buyer to  
20 purchase a counterfeit yellow aluminum LUNATIK branded  
21 iPhone 5 Cell Phone Case listed on ebay.com by eBay seller  
22 “slysky6688 (3493).

23 (viii) On or about November 30, 2014, eBay directly solicited a buyer to  
24 purchase a counterfeit red aluminum LUNATIK branded iPhone 5  
25 Cell Phone Case listed on ebay.com by eBay seller  
26 “sohishopping525 (8380).



- 1 (ix) On or about May 15, 2015, eBay directly solicited a buyer to  
2 purchase a counterfeit white aluminum LUNATIK branded and  
3 packaged TakTik Extreme iPhone 6 Cell Phone Case listed on  
4 ebay.com by eBay seller “Casemasterelite (136).”
- 5 (x) On or about May 15, 2015, eBay directly solicited a buyer to  
6 purchase a white counterfeit aluminum LUNATIK branded and  
7 packaged TakTik Extreme iPhone 6 Cell Phone Case listed on  
8 ebay.com by eBay seller “ultradeal2013 (2566).
- 9 (xi) On or about May 12, 2015, eBay directly solicited a buyer to  
10 purchase a black counterfeit aluminum LUNATIK branded and  
11 packaged TakTik Extreme iPhone 5 Cell Phone Case listed on  
12 ebay.com by eBay seller “alanw (22).
- 13 (xii) On or about May 12, 2015, eBay directly solicited a buyer to  
14 purchase a silver counterfeit aluminum LUNATIK branded and  
15 packaged TakTik Extreme iPhone 6 Cell Phone Case listed on  
16 ebay.com by eBay seller “nysltd (9530).”
- 17 (xiii) On or about February 16, 2015, eBay directly solicited a buyer to  
18 purchase a counterfeit aluminum LUNATIK branded and  
19 packaged TakTik Extreme iPhone 6 Cell Phone Case listed on  
20 ebay.com by eBay seller “b4sos (266).”

21 **Summary of the Pattern of Racketeering Activity Alleged**  
22 **Against Each RICO Defendant**

23 253. eBay has committed numerous counterfeiting violations—intentionally  
24 trafficking or causing to traffic counterfeit goods, conspiring to traffic counterfeit  
25 goods, and aiding and abetting the trafficking of counterfeit goods—all in furtherance  
26 of Defendants’ organized operation to sell and profit from the sale of obvious  
27 counterfeit goods, including Fake Lunatik Products bearing Plaintiff’s Marks. eBay

1 has also committed numerous mail and wire fraud violations, in which eBay used or  
2 caused to be used the mail or wires in furtherance of Defendants' widespread scheme  
3 to sell and profit from the sale of Fake Lunatik Products

4       254. Defendant PayPal has committed numerous predicate acts, including  
5 mail and wire fraud and trafficking in counterfeit goods. PayPal used or caused to be  
6 used the mail or wires in furtherance of Defendants' wide-spread scheme to sell and  
7 profit from the sale of counterfeit goods, including the Fake Products bearing  
8 Plaintiff' Marks. In addition, PayPal has both conspired to traffic in counterfeit goods  
9 and aided and abetted the trafficking of counterfeit goods in furtherance of  
10 Defendants' organized operation to sell and profit from the sale of counterfeit goods.

11       255. The Seller Defendants have committed numerous counterfeiting  
12 violations—intentionally trafficking or causing to traffic counterfeit goods, conspiring  
13 to traffic counterfeit goods, and aiding and abetting the trafficking of counterfeit  
14 goods, including the Fake Products bearing Plaintiff's Marks, all in furtherance of  
15 Defendants' organized operation to sell and profit from the sale of Fake Products.  
16 The Seller Defendants have also committed numerous mail and wire fraud violations,  
17 including without limitation website postings and online advertising of Fake Lunatik  
18 Products for sale, in which the Seller Defendants used or caused to be used the mail or  
19 wires in furtherance of Defendants' widespread scheme to sell and profit from the sale  
20 of Fake Lunatik Products.

21       256. Each of the Defendants has engaged in multiple predicate acts, including  
22 trafficking in Fake Lunatik Products, and engaging in mail and wire fraud in order to  
23 effectuate such sales, as described in the foregoing paragraphs. The conduct of each  
24 of the Defendants described in the foregoing paragraphs constitutes a pattern of  
25 racketeering activity within the meaning of [18 U.S.C. § 1961\(5\)](#).

26       257. Plaintiff has been injured in their businesses and property by reason of  
27 Defendants' violations of [18 U.S.C. § 1962\(c\)](#). The injuries to Plaintiff caused by  
28

1 reason of the violations of 18 U.S.C. § 1962(c) include but are not limited to damage  
2 to the value of Plaintiff's intellectual property and other assets, lost sales, and direct  
3 expenses from Plaintiff's efforts to stop the sale of Fake Lunatik Products through  
4 eBay's ineffective takedown procedures. More specifically, Defendants' racketeering  
5 activities have caused damage to Plaintiff's reputation, goodwill, and sales, including  
6 but not limited to lost sales from customers that would have purchased Plaintiff's  
7 Authentic Products but for the availability of inexpensive Fake Lunatik Products, and  
8 prospective customers who choose not to purchase Plaintiff's Authentic Products  
9 because of the availability of inferior inexpensive Fake Lunatik Products. Further,  
10 these injuries to Plaintiff were a direct, proximate, and reasonably foreseeable result  
11 of the violation of 18 U.S.C. § 1962(c), and Defendants' conduct is the direct and but  
12 for cause of these injuries. Furthermore, each new sale of Fake Lunatik Products, and  
13 each new commission of one of the predicate acts identified above, causes new  
14 injuries to Plaintiff.

15       258. Given the organized and pervasive nature of the Enterprise's promotion  
16 and sale of Fake Lunatik Products, and the Enterprise's continued and ongoing  
17 operations, which are likely to extend into the future, Plaintiff has been and will  
18 continue to be injured in its business and property in an amount to be determined at  
19 trial.

20       259. Pursuant to 18 U.S.C. § 1964(c), Plaintiff is entitled to recover treble  
21 damages plus costs and attorneys' fees from Defendants.

22       260. Plaintiff is further entitled to, and should be awarded, a permanent  
23 injunction that enjoins Defendants, their assignees, and anyone else acting in concert  
24 with them from directly or indirectly contributing to, aiding, or abetting the  
25 marketing, promotion, or sale of Fake Lunatik Products or any unauthorized or  
26 counterfeit products that bear, contain, display, or utilize any of Plaintiff's Marks, any  
27

1 derivation or colorable imitation thereof, or any mark confusingly similar thereto or  
2 likely to dilute or detract from Plaintiff's Marks.

3 **WHEREFORE**, Plaintiff respectfully requests that this Court:

4 1. Permanently enjoin eBay, PayPal and the Seller Defendants and their  
5 respective officers, directors, agents, representatives, successors or assigns, and all  
6 persons acting in concert or in participation with any of them from, with respect to  
7 any products offered as "new":

8 (a) manufacturing, distributing, delivering, shipping, importing,  
9 exporting, advertising, marketing, promoting, selling, or otherwise offering for  
10 sale Fake Lunatik Products or any other products confusingly similar to  
11 Plaintiff's Authentic Products, or that otherwise bear, contain, display, or  
12 utilize any of Plaintiff's Marks, any derivation or colorable imitation thereof, or  
13 any mark confusingly similar thereto or likely to dilute or detract from the  
14 Plaintiffs' Marks;

15 (b) processing credit card transactions or otherwise facilitating the  
16 sales of Fake Lunatik Products or any other products confusingly similar to  
17 Plaintiffs' Authentic Products, or that otherwise bear, contain, display, or  
18 utilize any of Plaintiff's Marks, any derivation or colorable imitation thereof, or  
19 any mark confusingly similar thereto or likely to dilute or detract from the  
20 Plaintiff's Marks;

21 (c) making or employing any other commercial use of Plaintiff's  
22 Marks, any derivation or colorable imitation thereof, or any mark confusingly  
23 similar thereto or likely to dilute or detract from the Plaintiff's Marks;

24 (d) using any other false designation of origin or false description or  
25 representation or any other thing calculated or likely to cause confusion or  
26 mistake in the mind of the trade or public or to deceive the trade or public into  
27 believing that Defendants' products or activities in connection with the offer  
28

1 and/or sale of Fake Lunatik Products are in any way sponsored, licensed or  
2 authorized by or affiliated or connected with Plaintiff; and

3 (e) doing any other acts or things calculated or likely to cause  
4 confusion or mistake in the mind of the public or to lead purchasers or  
5 consumers or investors into the belief that the products or services promoted,  
6 offered, or sponsored by Defendants come from Plaintiff or its licensees, or are  
7 somehow licensed, sponsored, endorsed, or authorized by, or otherwise  
8 affiliated or connected with Plaintiff; and

9 (f) moving, returning, or otherwise disposing of, in any manner, any  
10 Fake Lunatik Products or any other products confusingly similar to Plaintiff's  
11 Products, or that otherwise bear, contain, display, or utilize any of Plaintiff's  
12 Marks, any derivation or colorable imitation thereof, or any mark confusingly  
13 similar thereto or likely to dilute or detract from the Plaintiff's Marks; and (g)  
14 secreting, destroying, altering, removing, or otherwise dealing with the  
15 unauthorized products or any books or records which contain any information  
16 relating to the importing, manufacturing, producing, distributing, circulating,  
17 selling, marketing, offering for sale, advertising, promoting, renting, or  
18 displaying of all unauthorized products which infringe Plaintiff's Marks; and

19 (g) further diluting and infringing all Plaintiff's Marks and damaging  
20 Plaintiff's goodwill;

21 (h) otherwise competing unfairly with Plaintiff in any manner; and

22 (i) assisting, aiding, or abetting any other person or business entity in  
23 engaging in or performing any of the activities referred to in the above  
24 subparagraphs (a) through (i), or effecting any assignments or transfers,  
25 forming new entities or associations, or utilizing any other device for the  
26 purpose of circumventing or otherwise avoiding the prohibitions set forth in  
27 subparagraphs (a) through (i).

1           2.     Exercise the Court's inherent equitable authority and its statutory  
2 equitable authority under 15 U.S.C. § 1116 to direct Defendants to account to  
3 Plaintiffs for the profits obtained through the unlawful activities alleged herein and  
4 unjust enrichment obtained through the unauthorized use of Plaintiff's Marks.

5           3.     Order that the Plaintiffs recover their damages arising out of the acts of  
6 deception and infringement described above, and a sum equal to three times such  
7 profits or damages (whichever is greater), pursuant to 15 U.S.C. § 1117(a) and (b);

8           4.     Award Plaintiffs statutory damages in an amount to be determined  
9 representing \$2 million per counterfeit mark per type of goods or services sold,  
10 offered for sale, or distributed, pursuant to 15 U.S.C. § 1117(c);

11          5.     Award Plaintiffs treble damages in an amount to be determined plus  
12 costs and attorneys' fees from Defendants pursuant to 18 U.S.C. § 1964(c).

13          6.     Direct Defendants to recall and remove from all websites, online  
14 markets, or other channels of commerce any Fake Lunatik Products or any other  
15 products confusingly similar to Plaintiff's Authentic Products, or that otherwise bear,  
16 contain, display, or utilize any of Plaintiff's Marks, any derivation or colorable  
17 imitation thereof, or any mark confusingly similar thereto or likely to dilute or  
18 detract from the Plaintiff's Marks, that are in Defendants' possession or control, and  
19 all means of making the same;

20          7.     Direct Defendants to deliver up for destruction all Fake Lunatik Products  
21 or any other products confusingly similar to Plaintiff's Products, or that otherwise  
22 bear, contain, display or utilize any of Plaintiff's Marks, any derivation or colorable  
23 imitation thereof, or any mark confusingly similar thereto or likely to dilute or  
24 detract from the Plaintiff's Marks, that are in Defendants' possession or control, and  
25 all means of making the same, in accordance with 15 U.S.C. § 1118;

26          8.     Direct Defendants to deliver up for destruction any and all guarantees,  
27 circulars, price lists, labels, signs, prints, packages, wrappers, pouches, receptacles,  
28



1 advertising matter, promotional, and other materials in the possession or control of  
2 Defendants bearing any of Plaintiff's Marks, any derivation or colorable imitation  
3 thereof, or any mark confusingly similar thereto or likely to dilute or detract from  
4 Plaintiffs' Marks, in accordance with 15 U.S.C. § 1118;

5 9. Direct Defendants to supply Plaintiff with a complete list of entities from  
6 whom they collected and to whom they distributed and/or sold Fake Lunatik  
7 Products or any other products confusingly similar to Plaintiff's' Products, or that  
8 otherwise bear, contain, display or utilize any of Plaintiff's Marks, any derivation or  
9 colorable imitation thereof, or any mark confusingly similar thereto or likely to dilute  
10 or detract from Plaintiff's' Marks, and to provide documentation of the manner  
11 through which the Fake Lunatik Products or other products were paid, including any  
12 bank accounts to, through, or from which funds were wired;

13 10. Direct Defendants to file with the Court and serve on counsel for  
14 Plaintiffs within thirty (30) days after entry of any injunction issued by the Court in  
15 this action, a sworn written statement pursuant to 15 U.S.C. § 1116(a) setting forth in  
16 detail the manner and form in which Defendants have complied with any injunction  
17 which the Court may enter in this action;

18 11. Award Plaintiffs their reasonable attorneys' fees along with the costs and  
19 disbursements incurred herein as a result of Defendants' intentional and willful  
20 infringement, pursuant to 15 U.S.C. § 1117;

21 12. Award Plaintiffs such other and further relief as the Court deems just and  
22 proper.  
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**DEMAND FOR JURY TRIAL**

13. Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiffs demand a jury trial on all issues so triable.

Dated: August 20, 2015

Respectfully submitted,

R. REX PARRIS LAW FIRM

By: /s/ R. Rex Parris  
R. REX PARRIS, ESQ.  
DEBORAH A. KLAR, ESQ.  
Attorneys for Plaintiff  
WIMO LABS, LLC

i [www.thecounterfeitreport.com](http://www.thecounterfeitreport.com)

ii U.S. Department of Homeland Security, Intellectual Property Rights Seizures Statistics, Intellectual Property Rights Seizures Statistics, Fiscal Year 2013.

iii As used herein, the term “Unauthorized Sellers” refers to every person or entity who has infringed on Plaintiff’s Marks in connection with the promotion, advertisement, offer for sale, sale and distribution of obvious counterfeit Lunatik products in violation of the Lanham Act, as amended, and includes the “Seller Defendants” identified in paragraphs 10 through 20 of the Complaint.

iv <http://www.ebay.com/gds/Top-5-most-durable-smartphone-cases-/10000000178519568/g.html>

v S. Rep. No. 104-177, at 2 (1995) (quoting H.R. Rep. 98-997, at 5–6 (1984)).39.

vi *Tiffany, Inc. v. eBay, Inc.*, 600 F.3d 93 (2d Cir. 2009) (“*Tiffany*”).

vii *Id.*

viii About eBay, EBAY PARTNER NETWORK, <https://ebaypartnernetwork.com/files/hub/en-US/aboutEbay.html> (last visited Jul. 23, 2015).

ix See [www.stock-analysis-on.net/NASDAQ/Company/eBay-Inc/Ratios/Profitability#Operating-Profit-Margin](http://www.stock-analysis-on.net/NASDAQ/Company/eBay-Inc/Ratios/Profitability#Operating-Profit-Margin)

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- 1 x 2015 eBay ANN. REP. at 4.
- 2 xi *Id.*
- 3 xii *Id.*
- 4 xiii Supra at 5.
- 5 xiv Supra at 5-6.
- 6 xv Supra at 6-8.
- 7 xvi Supra at 4.
- 8 xvii Supra at 5-6.
- 9 xviii [http://pages.ebay.com/help/sell/promoting\\_ov.html](http://pages.ebay.com/help/sell/promoting_ov.html)
- 10 xix *Tiffany* at 97.
- 11 xx 2015 eBay ANN. REP. at 6.
- 12 xxi Supra at 5.
- 13 xxii *Id.*
- 14 xxiii 2015 eBay ANN. REP. at 11.
- 15 xxiv Supra at 26.
- 16 xxv *Id.*
- 17 xxvi *Id.*
- 18 xxvii ebay.com/help/policies/replica counterfeit.html.
- 19 xxviii 2015 eBay ANN. REP. at 26.
- 20 xxix <http://pages.ebay.com/help/policies/money-back-guarantee.html>
- 21 xxx “PayPal Q4 2014 Fast Facts” (PDF). eBay Inc. Retrieved 22 June 2015
- 22 xxxi 2015 eBay ANN. REP. at 7.
- 23 xxxii *Id.*
- 24 xxxiii 2015 eBay ANN. REP. at 7.
- 25 xxxiv *Supra* at 7-8.
- 26 xxxv 2015 eBay ANN. REP. at 8.
- 27 xxxvi 2015 eBay ANN. REP. at 20.

1 xxxvii 2015 eBay ANN. REP. at 22.

2 xxxviii 2015 eBay ANN. REP. at 26.

3 xxxix *See* [http://www.treasury.gov/resource-](http://www.treasury.gov/resource-center/sanctions/CivPen/Documents/20150325_paypal_settlement.pdf)  
4 [center/sanctions/CivPen/Documents/20150325\\_paypal\\_settlement.pdf](http://www.treasury.gov/resource-center/sanctions/CivPen/Documents/20150325_paypal_settlement.pdf)  
5 (“PayPal Settlement”)

6 xl [https://coincenter.org/2015/04/what-is-money-transmission-and-why-does-it-](https://coincenter.org/2015/04/what-is-money-transmission-and-why-does-it-matter)  
7 [matter](https://coincenter.org/2015/04/what-is-money-transmission-and-why-does-it-matter).

8 xli *See, e.g.*, PayPal Settlement

9 xlii <https://go.developer.ebay.com/ebay-market-data>

10 xliii <https://pages.ebay.com/againstcounterfeits/>

11 xlv [https://thecounterfeitreport.com/press\\_release\\_details.php?date=2014-11-](https://thecounterfeitreport.com/press_release_details.php?date=2014-11-10&id=443)  
12 [10&id=443](https://thecounterfeitreport.com/press_release_details.php?date=2014-11-10&id=443)

13 xlv *Id.*

14 xlv *Id.*

15 xlvii <http://pages.ebay.com/help/policies/programs-vero-ov.html>

16 xlviii [http://finance.yahoo.com/news/ebay-admits-banned-whistleblower-warning-](http://finance.yahoo.com/news/ebay-admits-banned-whistleblower-warning-032449045.html)  
17 [032449045.html](http://finance.yahoo.com/news/ebay-admits-banned-whistleblower-warning-032449045.html)

18 xlix [http://www.businessinsider.com/ebay-admits-it-banned-a-whistleblower-2014-](http://www.businessinsider.com/ebay-admits-it-banned-a-whistleblower-2014-11)  
19 [11](http://www.businessinsider.com/ebay-admits-it-banned-a-whistleblower-2014-11).